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AUTHOR	Gold, Jane Roosevelt
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ABSTRACT

This volume contains the technical paper prepared by the Department of Health, Education and Welfare (DHEW) to give additional data and more detailed analysis of materials used to study the administration of the Federal Interagency Day Care Requirements (FIDCR). This study was part of a larger project to investigate two questions: Is the Federal regulation of day care financed under Title XX appropriate? Are the specific requirements for day care now imposed under Title XX appropriate? The present volume contains three sections. Section I contains analyses of the comprehensiveness, extensiveness, and application of FIDCR and state licensing for day care standards. Section II analyzes federal implementation of policies and regulations in terms of clarity of goals, clarity of language, public involvement, the regulatory climate, conflict in loyalties, and enforcement policies. Section III discusses both state implementation of activities to ensure FIDCR compliance and general state measurement activities. Appendices are included. An Executive summary of the "Report on the Appropriateness of the FIDCR: Report of Findings and Recommendations;" the text of the FIDCR; and a legislative history of the FIDCR. Also provided are a 5-page bibliography and a 17-page glossary of terms. (Author/DB)

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The Appropriateness of the Federal Interagency Day Care Requirements...

Technical Paper 2:

ADMINISTRATION OF THE FIDCR

PS011392

U.S. Department of
Health, Education, and Welfare
Office of Assistant Secretary for
Planning and Evaluation

ADMINISTRATION OF THE FIDCR:

A DESCRIPTION AND ANALYSIS OF THE FEDERAL DAY CARE REGULATORY ROLE

By

Jane Roosevelt Gold, Ed.D.

January 1980

U.S. Department of
Health, Education, and Welfare

Office of the Assistant Secretary for
Planning and Evaluation

PREFACE

In June 1978 the Secretary of the Department of Health, Education, and Welfare transmitted to Congress the "Report on the Appropriateness of the Federal Interagency Day Care Requirements (FIDCR): Report of Findings and Recommendations," pursuant to the provisions of the Social Services Amendments of 1974 (Public Law 93-647).

The mandate contained in Section 2002 (a) (9) (B) of Title XX of the Social Security Act required the Secretary to submit to Congress "an evaluation of the appropriateness of the requirements...together with any recommendations he may have for modifications of those requirements."

Definition of the word "appropriateness" was not provided by Congress in P.L. 93-647 nor were criteria by which the appropriateness of the FIDCR might be evaluated. In developing its approach to the preparation of the report, therefore, the Department looked to the congressional background of the intents and goals of Title XX and the FIDCR.

The Department decided that the report should attempt to answer two fundamental questions:

1. Is the Federal regulation of day care financed under Title XX appropriate?

2. Are the specific requirements now imposed appropriate?

In answering those questions the Department analyzed data and issues along three parallel lines of inquiry: the impact of the FIDCR on children, families and providers, examined in Chapter 2; the costs of imposing the FIDCR, analyzed in Chapter 3; and the administration of the FIDCR at all levels of government, discussed in Chapter 4.

At the time of transmittal the Department declared its intention to publish three technical papers to expand on these three major topics.

The present volume contains the technical paper prepared to give additional data and more detailed analysis of the material in Chapter 4 of the report, "Administration of the FIDCR."

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INTRODUCTION

When Federal regulations are used as a device for assuring the quality of social services that Americans receive inevitable problems arise. These problems spring from two facts. First, the number of elements to be taken into account when drafting such regulations is enormous and, since they involve the infinite complexity of millions of individual lives, almost all the factors are variables. Second, while the regulations must cover an endless number of critically different situations they must also meet the comparatively rigid requirements of the nation's legal system. A fundamental fact to remember in considering the FIDCR then, is that stress and controversy is inherent in any Federal regulatory situation and is not unique to the regulation of day care.

In the case of the FIDCR, the requirements must meet the needs of children and parents from widely differing backgrounds, be applicable to all parts of the country and be comprehensible to hundreds of different Federal, State and local officials. As a technical document, the FIDCR must also be able to withstand legal challenges. In addition, regulatory systems must be self enforcing in the sense that most of the people will be content to obey the rules without direct coercion most of the time. Therefore, the FIDCR must be perceived to be sufficiently reasonable and practical to earn the general consent of those it affects.

Understanding the particular situation which exists concerning the Federal regulation of day care services requires understanding that the FIDCR have created a regulatory role for the Federal Government. It is important to view the FIDCR within the context of the Federal regulatory experience to fully appreciate the complexities of the present situation. The FIDCR as a set of requirements is only one dimension of the day care regulatory process. Their existence requires that a host of concomitant Federal level activities related to the development, implementation and administration of the requirements and of other supportive and enforcement tasks take place. The interplay of these various dimensions and the level of skill and committment required to carry out these tasks all have a bearing on how successful the regulations are in accomplishing their objective.

This paper will analyze and describe the FIDCR within the broader context of the Federal regulatory process. Within this framework Section I will describe the FIDCR as a legal document and discuss how they relate to State licensing codes. Section II will analyze the experience the Federal Government has had in developing and implementing the FIDCR as a form of social service regulation and Section III will discuss the ability the States have shown to administer the regulations.

SECTION I: OVERVIEW OF DAY CARE REGULATION

In 1967 Congress passed a series of amendments to the Economic Opportunity Act, including a mandate for the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity to establish "insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels" (P.L. 90-222, sec. 107(a)). In January 1969, these officials, with the concurrence of the Secretary of Labor, published the Federal Interagency Day Care Requirements (FIDCR), "to coordinate certain programs which provide day care." The FIDCR applied to virtually all Federal day care then authorized by the Social Security Act, the Economic Opportunity Act, the Manpower Development and Training Act, and Title I of the Elementary and Secondary Education Act (at the discretion of the States).

In 1975, enactment of Title XX of the Social Security Act combined day care services previously authorized by other titles under the new comprehensive Social Services program. The law incorporated an amended version of the 1968 FIDCR as funding requirements for day care provided under Title XX, Title IV-B, WIN Support Services, and Title IV-A (Social Services to Guam, Puerto Rico, and the Virgin Islands).

Technically, there are now two sets of FIDCR: the Title XX FIDCR, which cover day care supported with Federal funds made available under Title XX, and the original FIDCR promulgated in 1968. As a practical matter, there is little difference between the two sets of regulations. Title XX made only these relatively minor modifications in the original FIDCR:

- The educational requirements were changed from mandatory to optional;
- the child-staff ratios for school age children were increased from 10 children to one adult to 15 to 1;
- the Secretary, exercising discretion granted by Title XX, established child-staff ratios of 1 to 1 for children under the age of six weeks and 4 to 1 for children under the age of three years.

Federal programs to which either the 1968 or Title XX FIDCR apply are:

- Department of Health, Education, and Welfare:
  - --Office of Education, Vocational Education program
  - --Office of Human Development Services, Title XX, IV-A/WIN, IV-A, Social Services, and IV-B programs
- Department of Agriculture, Child Care Food Program (FIDCR apply under certain conditions)
- Appalachian Regional Commission, Child Development Centers
- Community Services Administration (FIDCR may apply to some programs)
- Department of Labor, Migrant and Seasonal Farm Workers Program.

The programs administered by the Office of Human Development Services account for the largest portion of the Federal Government's expenditures on direct funding of day care. Of the billion dollars spent by the Federal Government for day care services, $500 million was spent under Title XX in 1977.

The FIDCR prescribe conditions which States and providers must meet if they are to receive Federal funds for day care. Section 2002 (2) (9) (A) of the Social Security Act states that "no payment may be made with respect to any expenditure in connection with the provision of any child day care service" unless the FIDCR (as modified in that section) are met. Thus, adherence to the FIDCR is clearly a condition for Federal Financial Participation (FFP). Violation of any of the specific regulations identified in the FIDCR can result in denial of Federal dollars, retroactively as well as prospectively.

As a matter of law, State administrative units and child care providers must comply 100 percent with every provision of the FIDCR to be eligible for Federal funds. Legally, the Federal Government should not purchase care that fails to meet all of these conditions. Moreover, if the Federal Government determines that a State or day care provider has received Federal funds for care that did not fully meet FIDCR standards it can require a refunding of the Federal monies. Provider compliance with the FIDCR is routinely determined by the States, but the Federal Government, through the regional offices, has the authority to audit the activities of States and day care providers.

The FIDCR are only one of many regulatory actions that have been taken out of concern for children in day care.

Vertically, there are three layers of day care regulations: at the Federal, State, and local levels.

Horizontally, the Federal Government funds and regulates day care programs through the Departments of HEW, Agriculture, Defense, Labor, and Housing and Urban Development; the Bureau of Indian Affairs, and the Community Services Administration. The 1968 FIDCR apply to some of these programs, the Title XX FIDCR to others, and the Department of Defense regulates its own program. At the State and local levels there are several regulatory bureaucracies concerned with day care, each acting under their own separate statutory mandates, supported by separate constituencies, sending separate inspectors, with separate perspectives and training, looking for separate things. For example:

- The fire safety and building safety systems, sometimes combined, sometimes separate, sometimes operating under a uniform State code, sometimes having the power to add additional local restrictions. These regulators are usually local building inspectors, and sometimes fire department officials, operating under State authority to protect property and life from the danger of holocaust. Some States have a separate day care code; many others apply school or institutional codes.

- Local health officials, often acting under an undetermined number of different State codes, promulgated in response to a State statutory mandate to protect against the spread of disease. Codes applied are seldom specific to day care; they are most likely to be appropriate for hospitals or restaurants (Morgan, 1976, Aronson and Pizzo, 1976).

- State or local day care licensing staff, acting on standards developed by a State or local agency, usually Welfare, but sometimes Health, an Office of Child Development, or, rarely, Education. The staff and constituency are concerned for children in day care, and likely to be knowledgeable about it.

- Local zoning codes, sometimes applied inadvertently to day care (as when day care is not permitted because it is not listed in a list of permitted uses); and sometimes applied quite directly, (as when regulating the amount of outdoor play space) (see also, Table 1).

This lack of system, which can be costly to day care, is beyond the direct control of the Congress. With improved Federal leadership and technical assistance, the States might be able to streamline and coordinate these processes.

State Standards

The FIDCR are purchase-of-service requirements that prescribe conditions programs must meet to be eligible for Federal funds. They should not be confused with State licensing standards, though they often are. State licensing standards are State regulations which prescribe the minimum standards of performance a day care program must meet to operate legally. In some States day care facilities operated by public agencies, religious organizations or shopping centers are not subject to State standards (Lawrence Johnson and Associates, 1978). If a day care program, subject to State standards, is not licensed, it is doing business illegally. Each State has its own licensing standards and they vary in content.

TABLE 1 Compliance With Other Local, State and Regional Laws and Regulations

States	Zoning		Building			Fire			Health			Sanitation			New Construction and Renovation Approvals							Other
																		Other Administrative Approvals				
	Local	Other	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Other State Agency	Other Local AGency	Licensing Agency	Health	Zoning	Building	Other Required Administrative Approval	Other Requirements
Alabama										✓	✓							✓				
Alaska							✓	✓		✓	✓		✓	✓		✓		✓				
Arizona							✓	✓		✓	✓		✓			✓						
Arkansas	✓			✓	✓			✓		✓	✓											✓
California	✓																					
Colorado				✓	✓	✓	✓	✓		✓	✓				✓	✓						✓
Connecticut	✓										✓		✓									
Delaware							✓			✓	✓		✓				✓					
District of Columbia	✓	✓	✓	✓		✓	✓		✓	✓												
Florida							✓	✓														
Georgia							✓	✓									✓		✓	✓		
Hawaii				✓				✓		✓			✓	✓			✓					
Idaho								✓					✓									
Illinois				✓						✓												
Indiana	✓		✓	✓			✓			✓					✓		✓					
Iowa																						
Kansas	✓			✓	✓		✓	✓														
Kentucky							✓															
Louisiana										✓	✓		✓	✓								
Maine				✓	✓		✓	✓		✓			✓	✓								✓
Maryland							✓	✓					✓	✓			✓					
Massachusetts				✓	✓					✓	✓											
Michigan				✓	✓		✓	✓														
Minnesota	✓	✓		✓			✓	✓					✓	✓						✓		

TABLE 1 (Continued)

States	Zoning		Building			Fire			Health			Sanita-tion			New Construction and Renovation Approvals							Other
																		Other Administra-tive Approvals				
	Local	Other	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Nat./Reg.	State	Local	Other State Agency	Other Local AGency	Licensing Agency	Health	Zoning	Building	Other Required Administrative Approval	Other Requirements
Mississippi	✓				✓		✓	✓		✓			✓				✓					
Missouri	✓	✓		✓	✓		✓			✓	✓		✓	✓				✓	✓	✓	✓	
Montana	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓								
Nebraska	✓		✓	✓			✓	✓			✓	✓	✓	✓	✓	✓						
Nevada				✓				✓			✓											✓
New Hampshire							✓	✓														
New Jersey										✓		✓										
New Mexico	✓				✓		✓	✓									✓					
New York	✓				✓			✓		✓	✓		✓	✓			✓					
North Carolina				✓									✓		✓		✓	✓		✓		
North Dakota						✓																
Ohio							✓			✓	✓											
Oklahoma							✓	✓		✓					✓			✓		✓		
Oregon				✓									✓									
Pennsylvania															✓	✓						
Rhode Island		✓	✓	✓			✓	✓					✓	✓								
South Carolina			✓	✓	✓	✓				✓			✓				✓					✓
South Dakota																	✓	✓			✓	
Tennessee					✓			✓		✓												
Texas								✓		✓	✓		✓									
Utah				✓	✓		✓	✓		✓	✓		✓	✓	✓	✓		✓		✓		
Vermont							✓			✓			✓									
Virginia				✓	✓		✓	✓		✓	✓		✓	✓	✓	✓		✓		✓		✓
Washington					✓		✓															
West Virginia							✓	✓		✓												
Wisconsin				✓						✓			✓									
Wyoming							✓															

SOURCE: Lawrence Johnson and Associates, Inc., Comparative Licensing Study, 1978.

Standards may include all or some of the following components:

- health and safety regulations
- programmatic requirements
- indications of quality for programmatic components
- administrative requirements
- funding requirements
- environmental and physical structure specifications
- staffing requirements.

The variations in licensing standards from State to State often have been a point of controversy and the debate relates to the larger question of whether the regulation of federally sponsored day care should be a Federal or State responsibility. Those who take a States rights position agree that variation is inevitable and healthy. It is inevitable, in this view, because each of the 50 States has its own State 'culture', its own history and policies, its own demographic and geographic characteristics, and its own day care needs. Variation is seen as healthy because permitting the States to determine their own mandatory quality enables them to write regulations which are responsive to local needs and realities. And, the argument continues, States are as concerned as the Federal Government about ensuring the safety and health of their children.

Those who are uneasy about State-to-State variations, or who oppose them vehemently, support a more universal definition of quality and look to the Federal Government to define and demand quality. Their position is based on the belief that catering to local interests at the State level may mean that children's rights and needs are subordinated to other considerations. They cite as one example, the need for a Federal role to secure the civil rights of minority groups.

The argument of State vs. Federal rights is both a philosophical and political issue. It is an argument which will continue for as long as the Federal Government continues to assume a regulatory role.

The FIDCR and State Licensing Standards: Comprehensiveness

All day care subject to the FIDCR must first comply with State licenisng standards. Licensing standards are a necessary condition for regulating the quality of day care, but are they sufficient to insure the uniform minimum level of program performance acceptable to the Federal Government? Prior to 1968, State licensing standards would not, on the whole, have promoted the level of program performance the FIDCR promote. State standards were not adequate in that many had no requirements for centers and family day care homes and many did not address the same core component elements as the FIDCR.

Since 1968, changes in State standards have been numerous and significant. In 1976, Pacific Consultants reported that only 10 States were "...still using center or home standards which were developed in 1968 or earlier...." It appears that the existence of the FIDCR was a factor in States' decisions to revise their standards (Pacific Consultants, 1976, p. 104). Another factor was the existence of the model licensing codes developed by the Office of Child Development in 1972. Change, however, has not necessarily meant that State standards have developed according to the FIDCR model. Some States, such as Massachusetts, developed standards that are more stringent and comprehensive than the FIDCR. Other States developed less stringent standards. Mississippi, for example, revised its center child care licensing standards in 1975 but elected not to establish required child-staff ratios (Pacific Consultants, 1976). Connecticut recommends but does not require adherence to its child-staff ratios. In Idaho various jurisdictions are debating whether they have the authority to apply enforcement sanctions for violation of their standards.

Research data on current State licensing standards are incomplete and frequently contradictory. Even where reliable data do exist, it is difficult to compare the requirements of the FIDCR with those of the State licensing standards.

One reason for this difficulty is that State standards often incorporate local code requirements for fire, health, building safety and sometimes zoning. These local standards are not developed and implemented by one agency, which causes contradictions and problems of coordination in applying them. Moreover, many communities apply the local public school, restaurant, and hospital standards, and these are frequently inappropriate to a day care environment (Morgan, 1976; and Aronson and Pizzo, 1976).

Another reason for the difficulty in comparing standards is that States differ with respect to what components of a day care program they regulate.

CENTER CARE: Almost all States and the Federal Government regulate some components of child-staff ratios and environmental, administrative, health and safety and educational aspects of a day care center program. Not all States, however, regulate the same aspects of the program's components. Information from the Lawrence Johnson, Associates survey of 1977 State standards (1978) illustrates this point.

- Child-staff ratios: While all States have identified child-staff ratios, they do not all have established ratios for children of various ages: 17 States and the District of Columbia do not have ratios for infants and toddlers, six States do not have ratios for the two-year-old child, five States for the three- and four-year-old child, 11 States for the five-year-old child, and 21 States for school-aged children (see Table 2).
- Group size: Of 41 States including the District of Columbia (where information is available), 31 regulate group size. However, of these 31: only 12 States establish group sizes for children of all ages: 15 States regulate group size only if a child is age one and a half or older, one State only if the child is age three months or older, and two States only if the child is six weeks or older.
- Health requirements: Missouri is the only State which does not have day care standards that require a child to have either a health exam or to be immunized. Of the 50 States and the District of Columbia which do have health requirements: nine States do not require any medical exams (physical, TB, dental or hearing) and 10 States do not require a child to be immunized. States which do require a child to be immunized vary as to what immunizations they require: 18 States do not require immunization for measles, 22 for whooping cough,

TABLE 2 Staff Child Ratios - Day Care Centers

States	Age of Children: Infants	Toddlers	2-3	3-4	4-5	5-6	School Age	Other (including special groups)
	Maximum Number Per Staff	Maximum Number Per Staff	Maximum Number Per Staff	Maximum Number Per Staff	Maximum Number Per Staff	Maximum Number Per Staff	Maximum Number Per Staff	
Alabama	5	5	10	10	20	20	22	✓
Alaska	5	5	10	10	10	20	15	✓
Arizona	8	10	10	15	20	25	25	✓
Arkansas	0	0	12	12	15	18	0	
California	0	0	0	0	0	0	0	✓
Colorado	0	0	8	10	12	15	25	
Connecticut	8	8	8	0	0	0	0	
Delaware	5	8	15	15	20	20	25	
District of Columbia	0	0	4	8	16	15	15	✓
Florida	6	8	12	15	20	25	0	✓
Georgia	7	10	10	15	18	20	25	
Hawaii	0	0	10	15	20	25	0	
Idaho	6	8	0	0	0	0	0	✓
Illinois	0	0	8	10	10	0	0	✓
Indiana	0	0	5	15	15	15	0	✓
Iowa	4-6	6	6-8	8-12	12	15	15-20	
Kansas	3	5	7	10	10/12*	10/20*	16	✓
Kentucky	6	6	8	10	12	15	20	
Louisiana	6**	8**	12-14**	14-16**	16-20**	20-25**	25**	< 11 children
Maine	0	0	8	10	15	0	0	
Maryland	0	0	6	10	10	13	0	✓
Massachusetts	3	4	10	10	15	5	25	✓
Michigan	0	0	10	10	20	0	0	✓
Minnesota	4	7	10	10	10	0	0	✓
Mississippi	0	0	8-10	10-15	15-20	20	25	✓
Missouri	0	0	8	10	10	15	0	✓
Nebraska	4	4	5	10	10	10-12	12	
Nevada	4-6	6-8	8	0	0	0	0	
New Hampshire	0	0	10	10-15	15-18	18-20	0	
New Jersey	0	0	0	0	0	0	0	
New Mexico	7	7	15	15	20	20	0	
New York	4	5	5	5	7	7-10	10	
North Carolina	8	8	12	15	20	25	0	✓
North Dakota	4	4	4	6	7	10	15	✓
Ohio	8	10	10	15	15	20	0	✓
Oklahoma	4	6	8	12	15	15	20	
Oregon	0	0	0	10	10	10	15	✓
Pennsylvania	4	4-5	5	10	10	10-12	12	
Rhode Island	0	0	0	10-15	15-25	0	0	
South Carolina	8	8	12	15	20	25	25	
South Dakota	5	5	5	5-8	8	8	10	✓
Tennessee	0	0	0	10-15	20	25-30	30	✓
Texas	5-6	9	11	15	18	22	26	
Utah	0	0	7	15	15	20	25	
Vermont	4	4-5	5	10	10	10-12	12	✓
Virginia	4	4	10	10	10	10	25	✓
Washington	5	7	7	10	10	10	0	
West Virginia	4	4	8	10	12	15	16	✓
Wisconsin	3	4	6	10	12	16	16	
Wyoming	5	5	8	10	15	20	25	

SOURCE: Lawrence Johnson and Associates, Inc., Comparative Licensing Study, 1978.

39 for smallpox, 19 for polio, 19 for diphtheria and 21 for tetanus. (see Table 3).

Only two States have no medical requirements for day care center staff. As Table 4 illustrates there is great variation in what health components for staff are regulated (see Table 4).

On the whole, States do not support the establishment of licensing requirements for social services, parent involvement and program evaluation.

FAMILY DAY CARE: All States have standards for family day care homes, but in five States these standards apply only if the home is providing federally funded care. Six other States apply standards only if the number of children in care exceeds: one child (one State), two children (four States), three children (one State). As in the case of standards for day care centers, States vary as to what specific day care components they regulate.

- Child-staff ratios: Child-staff ratios and group size requirements in family day care are usually the same because it is expected that there will only be one group and one caregiver. Six States have no ratio or group size requirements.

- Health requirements: Fifteen states including the District of Columbia do not require that a child receive a medical examination or be immunized. Of the 36 States which do have some health requirements, four do not require any medical examinations and eight do not require any immunizations. For the States which do require medical examinations: 27 States require a physical, only eight require a TB exam, only two a dental exam, one a hearing exam, and six States specify "other medical exams." For the States which require immunizations only 13 require a child to be immunized against the measles, only 12 against whooping cough, only six against smallpox, 13 against polio, 13 against diptheria, 13 against tetanus and 16 States require "other immunizations." Forty-four States and the District of Columbia have medical requirements for a family day care operator.

TABLE 3 Child Eligibility: Health Requirements for Children in Day Care Centers

States	Waiver of Requirements		Admission of Children Under 2½		Admission of Handicapped only if:						Medical Examinations										Immunizations												
	Rel. or Med. Waiver of:										Physical		TB		Dental		Hearing		Other		Required							To be Received-Mos. of Enrollment					
	Health Examinations	Immunizations	Specified	Not Specified	Appr'd by Lic. Agency	Additional Staff	Spec. Equip.	Not Admitted	Other	Not Specified	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Measles	Whooping Cough	Smallpox	Polio	Diphtheria	Tetanus	Other	3 mos.	6 mos.	Other	Not Specified	Booster or Follow-Up	Other Requirements
Alabama											✓	✓															✓						
Alaska																																	
Arizona	✓	✓									✓																✓						
Arkansas				✓						✓																					✓		
California				✓						✓																					✓		
Colorado				✓						✓																							
Connecticut				✓						✓	✓	✓															✓	✓					✓
Delaware				✓						✓	✓	✓			✓	✓			✓												✓		
District of Columbia				✓						✓																					✓		✓
Florida	✓			✓						✓			✓														✓			✓			✓
Georgia				✓						✓	✓	✓	✓						✓		✓	✓	✓	✓	✓	✓					✓		✓
Hawaii				✓						✓	✓																				✓		
Idaho				✓						✓																					✓		
Illinois	✓	✓		✓						✓	✓	✓									✓	✓		✓	✓	✓	✓				✓		
Indiana				✓						✓																					✓		✓
Iowa				✓				✓			✓	✓															✓				✓		
Kansas	✓	✓							✓		✓		✓						✓								✓				✓		
Kentucky				✓						✓																					✓		
Louisiana				✓				✓			✓	✓	✓	✓								✓	✓	✓	✓	✓						✓	✓
Maine	✓	✓								✓																						✓	✓
Maryland		✓							✓		✓	✓									✓	✓		✓	✓	✓				✓		✓	
Massachusetts	✓	✓							✓		✓										✓	✓		✓	✓	✓							
Michigan									✓												✓	✓		✓	✓	✓	✓					✓	
Minnesota				✓					✓																						✓		✓

TABLE 3 (Continued)

States	Waiver of Require-ments		Admission of Children Under 2½		Admission of Handicapped only if:						Medical Examinations										Immunizations												Other Requirements
	Rel. or Med. Waiver of:										Physi-cal		TB		Dental		Hear-ing		Other		Required							To be Received-Mos. of Enrollment					
	Health Examinations	Immunizations	Specified	Not Specified	Appr'd by Lic. Agency	Additional Staff	Spec. Equip.	Not Admitted	Other	Not Specified	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Measles	Whooping Cough	Smallpox	Polio	Diphtheria	Tetanus	Other	3 mos.	6 mos.	Other	Not Specified	Booster or Follow-Up	
Mississippi				✓						✓																					✓		
Missouri				✓						✓	✓	✓																			✓		
Montana		✓		✓					✓	✓											✓			✓	✓	✓	✓				✓		
Nebraska				✓						✓	✓										✓	✓	✓	✓	✓	✓	✓				✓		
Nevada	✓	✓	✓						✓		✓	✓					✓		✓											✓			✓
New Hampshire					✓						✓	✓	✓																		✓		
New Jersey																																	
New Mexico																																	
New York				✓						✓	✓				✓						✓	✓	✓	✓	✓	✓	✓				✓		
North Carolina																																	
North Dakota											✓	✓									✓	✓			✓	✓	✓						✓
Ohio				✓						✓																					✓		✓
Oklahoma				✓						✓									✓												✓		
Oregon																																	
Pennsylvania	✓	✓		✓						✓	✓																✓				✓		✓
Rhode Island				✓						✓											✓		✓	✓						✓			
South Carolina							No Further Requirements for Family Day Care Homes in South Carolina																										
South Dakota				✓						✓	✓										✓	✓		✓	✓	✓	✓				✓		
Tennessee				✓		✓					✓	✓	✓														✓				✓		
Texas	✓	✓		✓						✓	✓	✓	✓	✓							✓	✓		✓	✓	✓					✓		
Utah				✓						✓	✓																				✓		
Vermont				✓						✓	✓										✓			✓	✓						✓		
Virginia				✓						✓	✓	✓															✓						
Washington				✓						✓																					✓		
West Virginia			✓							✓																					✓		
Wisconsin																																	
Wyoming			✓							✓	✓																				✓		

SOURCE: Lawrence Johnson and Associates, Inc., Comparative Licensing Study, 1978.

TABLE 4 Health Requirements for Child Care Staff and Volunteers

																			Other Staff	
	Med. Exam		Chest X-Ray		TB Exam.		Exam for Int. Para-sites		VD Exam		Blood Test		Mental Health		Other		Food Han-dlers Permit		Other	
States	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual	Initial	Annual
Alabama	✓	✓	✓		✓		✓		✓											
Alaska	0	0	0	0	0	0														
Arizona	✓		✓			✓														
Arkansas	✓	✓	0	0		✓													✓	✓
California	✓		✓		✓															
Colorado	✓	✓	✓	✓	✓	✓							✓	✓						
Connecticut	✓	✓	✓		✓															
Delaware	✓	✓	✓		✓															
District of Columbia		✓	✓		✓										✓					
Florida	✓		✓	✓	✓	✓									✓				✓	
Georgia	✓	✓	0	0	0	0														
Hawaii	✓	✓	✓		✓															
Idaho	✓		0	0	0	0														
Illinois	✓		0	0	✓				✓								✓			
Indiana	✓	✓	✓	✓	✓	✓			✓	✓										
Iowa	✓		0	0	0	0			✓											
Kansas	✓	✓*	✓		✓															
Kentucky	✓		0	0	✓	✓			✓											
Louisiana	✓	✓	✓		✓										✓					
Maine	✓	✓	0	0	✓	✓														
Maryland	✓	✓	✓	✓	✓	✓														
Massachusetts	✓		✓		✓															
Michigan	✓		0	0	✓	✓														
Minnesota	✓	✓*	0	0	✓	✓							✓							
Mississippi	✓		0	0	0	0														
Missouri	✓	✓	✓	✓	✓	✓							✓	✓						
Nebraska	0	0	0	0	0	0														
Nevada	✓	✓	✓	✓	✓	✓														
New Hampshire	✓	✓	✓	✓	✓	✓													✓	✓
New Jersey	✓	✓	0	0	✓	✓													✓	✓
New Mexico	✓	✓	✓	✓	✓	✓														
New York	✓	✓		✓		✓									✓					
North Carolina		✓	0	0	0	0														✓
North Dakota	✓	✓	0	0	0	0							✓	✓						
Ohio	✓	✓	✓	✓	✓	✓														
Oklahoma	✓	✓	0	0	0	0							✓	✓			✓	✓	✓	✓
Oregon	0	0	✓		✓												✓		✓	
Pennsylvania	✓	✓	0	0	✓															
Rhode Island	✓		✓		0	0											✓		✓	
South Carolina	✓		0	0	✓	✓									✓	✓				
South Dakota	✓	✓	0	0	✓															
Tennessee	✓		✓		✓												✓		✓	
Texas	✓	✓	✓	✓	✓	✓											✓	✓	✓	✓
Utah	0		✓	✓	✓	✓											✓	✓	✓	✓
Vermont		✓		✓		✓														
Virginia	✓	✓	0	0	✓	✓											✓	✓	✓	✓
Washington	0	0	✓	✓	✓	✓													✓	✓
West Virginia	✓	✓	✓	✓	✓	✓											✓	✓	✓	✓
Wisconsin	✓	✓	✓	✓	✓	✓							✓						✓	✓
Wyoming	✓	✓	0	0	✓	✓											✓	✓	✓	✓

SOURCE: Lawrence Johnson and Associates, Inc., Comparative Licensing Study, 1978.

- Staff requirements: Eight States have no identified requirements for family day care operators. An additional six States have only age requirements for staff.

For the other components of the FIDCR, forty-six States and the District of Columbia have education requirements, forty-five States have emergency requirements, forty-seven States have nutritional requirements and administrative record keeping requirements. There is little similarity between the other components of the FIDCR and State standards for family day care homes.

IN-HOME CARE: only 20 States have any requirements for in-home care. The FIDCR do not include standards for in-home care and rely on States to develop this type of regulation.

The FIDCR and State Licensing Standards: Extensiveness

The fact that a State licensing standard has requirements for the same components as the FIDCR does not speak to either the adequacy or specificity of that requirement. Compounding the difficulties of comparing State standards to the FIDCR is the fact that the FIDCR and State licensing standards are not precise documents. The vagueness of the language in the FIDCR, and in most of the licensing standards, allows for conflicting interpretations. State licensing standards and the FIDCR classify similar functions under different groups and do not have a common set of definitions. States do not always regulate the same aspects of a particular component and it is frequently difficult to determine if the elements being regulated are comparable in importance.

Finally, not all States rely on licensing requirements to articulate the extent of their efforts to control the quality of day care programs. Some States ensure that specific activities take place through non-regulatory processes: e.g., program management, guidance materials.

The child-staff ratio requirements identified in the FIDCR and State codes are among the most easily measurable of the regulatory provisions. Yet even here problems exist in determining comparability. The problem is establishing just what the ratios are intended to represent. Who, for example, should be counted as staff: all of the center staff or only those individuals who work some percentage of their time with children? How should ratios be computed: on the basis of center enrollment or on the basis of average daily attendance?

How States apply the FIDCR ratios is an essential component in defining ratios. To illustrate the importance of this issue consider a hypothetical case of two States. State A has an established child-staff ratio for three-year-olds of 6 to 1 while State B's child-staff ratios for the same age child is 4 to 1. State A requires that the 6 to 1 ratio be applied counting only those staff in a center who spend the majority (at least 75%) of their time working directly with children and that the ratios be based on the total enrollment of the children in the program. State B, with a child-staff ratio of 4 to 1, does not specify what staff should be included in determining compliance or whether ratios should be computed based on total enrollment or average daily attendance. Comparing the States only by their identified child-staff ratios, State B would appear to have higher standards than State A. Taking into consideration the conditions each State has identified for applying these ratios, however, may render a very different verdict. State A's ratios could be considered more stringent. Not putting any conditions on what staff should be included in the head count means that State B could include staff who have no contact with children at all, e.g., cooks, bookkeepers, janitors, in the ratio. Further, if State A bases its ratio count on total program enrollment then the 6 to 1 child-staff ratio is established on the maximum number of children in a program, not the actual number which is usually 12% less than the total enrollment group size. When ratio is based on enrollment, more staff will be needed then when ratio count is determined by actual attendance figures. These are some of the limitations in just comparing numbers without knowing how these numbers are to be applied. Given this caveat, the national averages for child-staff ratios in State licensing standards, which conceal considerable variation among States, are:

- Dramatically different from FIDCR for three, four and five-year-old children in day care centers; and

- Closest to equalling the FIDCR for children under age two, children six through nine years old, and for children over age 10. (see also Table 5 and Figure 1)

In 1976, the child-staff ratio requirements for family day care homes contained in most State standards were as extensive as the FIDCR: 45 States and the District of Columbia had established ratios of 6:1 or less; one State (Florida) had a ratio of 5 to 10:1; four States had a ratio of 7:1; and one State (Kentucky) had no ratio requirement (Pacific Consultants, 1976).

The FIDCR and State Licensing Standards: Application

States differ in how they apply these standards:

- Center care. All States require that private centers be licensed and 45 States require the licensing of publicly operated centers. For the remaining six States, public centers are either approved (four) or certified (two) (Pacific Consultants, 1976).

- Family day care homes. The majority of States (33) and the District of Columbia license family day care homes; seven require licenses only if a home is serving four or more children; three approve homes; three register homes; and five do not apply sanctions unless the home is subject to the FIDCR.

- In-home care. Forty-one States do not implement requirements for in-home care either because the homes are not receiving Federal monies under Title XX (19), there are no State requirements (10), this provider category is not used (10), or the information is unknown (2). Two States license in-home care, six approve homes, and two register them.

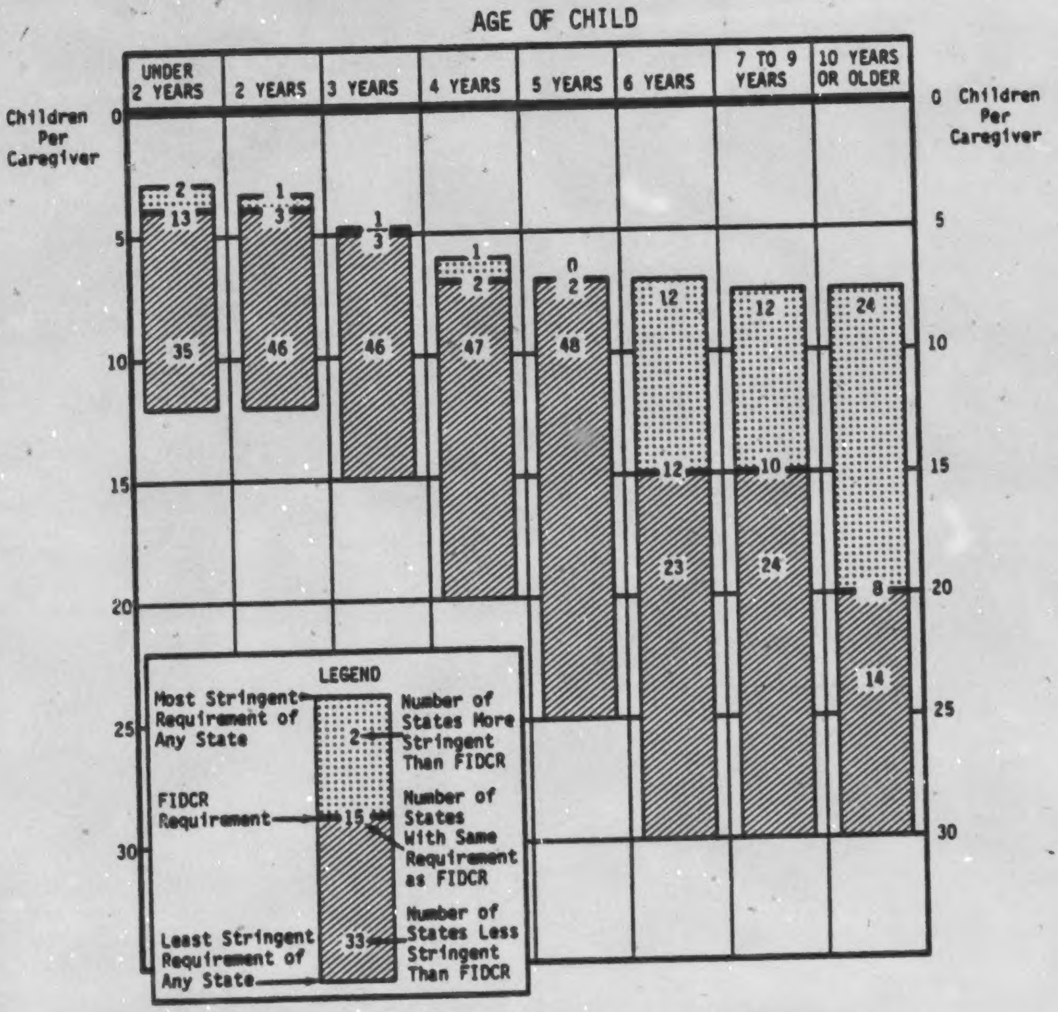
TABLE 5 Comparison of Day Care Center Staffing Requirements for FIDCR and State Licensing Standards

Age of Child	FIDCR Staffing Requirement for Children Per Adult	National Average of the Child Staff Ratios for All States	Number of States Having Staffing Requirements at Least as Extensive as FIDCR
Under 2 years	4.0	6.8	15
2 years	4.0	9.0	4
3 years	5.0	11.3	4
4 years	7.0	13.6	3
5 years	7.0	16.6	2
6 years	15.0	18.4	24
7-9 years	15.0	18.8	22
10 years	20.0	19.0	32

SOURCE: Abt Associates, Inc., National Day Care Center Supply Study, 1977.

FIGURE 1

Range of State Staffing Requirements And Effective Maximum Child/Staff Ratios, by Age of Child



NOTE: Mississippi regulations do not specify any required ratio for any age group. Idaho, Maryland, and Rhode Island regulations do not specify a requirement for children age 6 and older. Massachusetts does not specify a requirement for children age 7 and older. Connecticut recommends rather than requires staffing ratios. (The District of Columbia is included in the State counts.)

SOURCE: Abt Associates, Inc., National Day Care Center Study, 1977.

In conclusion, although State licensing standards have become more stringent in the past 10 years, the evidence indicates that these codes still do not insure a minimum level of program performance when judged by their comprehensiveness.

SECTION II: FEDERAL IMPLEMENTATION

A. INTRODUCTION

Many of the problems commonly identified with the FIDCR are, in fact, typical of problems that exist whenever the Federal Government attempts to regulate. Thus a realistic assessment of the FIDCR must take into account the whole "state-of-the-art" of Federal regulation; only when the FIDCR is viewed in that context can its strengths and weaknesses be put into proper perspective. And, only within that context can realistic modifications of the present FIDCR be proposed. For example, attitudinal information collected in Region V by Unco (1975) and a ten-state study by APWA/REAP (American Public Welfare Association, 1977) found that one barrier to the effective enforcement of the FIDCR was the lack of Federal leadership in helping States implement the FIDCR. An analysis of the Federal experience in the regulation of social services in general suggests that this is a perennial problem. There is an inherent difficulty in translating Federal concern on any social issue into concrete actions which are responsive to both Congressional intent and the States' need for strong leadership. What this implies is that those involved with the FIDCR need to recognize and accept the fact that a period of working through certain intrinsic problems is unavoidable and not unique to day care regulation.

There appear to be three primary factors that have contributed to the difficulties the Federal Government has experienced in its efforts to enforce the FIDCR. To begin with the art of regulating social services programs is not yet well developed. The early and mid-1960's were a period of rapid growth for federally financed social services programs as the building days of the 'great society' progressed. The 1962 amendments to Title IV of the Social Security Act provided the mechanism for funneling funds into the States. By the late 1960's, however, the fiscal constraints of financing a war and the growing recognition that the allocation of money alone would not necessarily achieve a more equitable or just society brought an end to the period of growth. The determination to preserve gains, cut losses, and implement a process of accountability initiated the Federal Government into the new task of regulating social services.

As an organization, HEW has discovered many difficulties in seeking program accountability. One view, described by Tomlinson and Mashaw, is that HEW is not enforcement oriented. HEW's primary role is seen as providing technical assistance to States in building programs, not policing the quality of the services it funds. Tomlinson and Mashaw give the example of HEW's failure to develop adequate organizational procedures to enforce compliance with AFDC requirements to illustrate this point. "Until 1968 regional offices had no delegated authority to negotiate with States concerning compliance issues. They could merely identify such issues and refer them to the central office." When one Regional Office was delegated the authority to settle compliance issues it was able to dispose of fifty-seven cases in one month. Over half of these had been pending for more than two years in the central office (Tomlinson and Mashaw, 1977, p. 621).

Beyond the difficulty of reordering its goals to include enforcement, HEW has had to contend with the tendency inherent in all Federal bureaucracies to avoid regulatory duties because they often lead to political controversy. "Federal grant personnel are hesitant to play, or play often, in high-ante games. Furthermore, sharp delineation of Federal versus State positions and stringent efforts to exact compliance are likely to cause control of the conflict to shift from the hands of agency professionals to the hands of politicians. If this happens, the results will be unpredictable and from the program professional's viewpoint may be disastrous," Tomlinson and Mashaw, 1977, p. 620). To avoid such potentially dangerous entanglement, most agencies adopt negotiation and compromise as their style of operation -- a style which is not always compatible with the goal of accountability.

Another of the basic reasons why the art of regulating social services is not well developed is that, as a society, Americans are not sure just what to regulate, how to regulate or whether, in fact, to regulate at all.

While we may be strongly inclined as a nation to regulate federally supported nursing homes and day care programs, for example, we are not sure exactly what aspect of the program should be regulated or how to measure the effectiveness of program elements being regulated.

The relative infancy of social service regulation, the organizational barriers to effective enforcement, and the lack of firm national consensus on regulation all contribute to the particular historical context in which the Federal Government's efforts to enforce the FIDCR have taken place. For purposes of analysis, this section will assess the record on FIDCR in terms of six basic factors that regulatory experts believe influence the success or failure of Federal regulation in general:

- The clarity of the goals the regulation is designed to achieve.
- The clarity of the language of the regulations.
- The involvement of the public in the regulatory process.
- The climate in which the regulatory process takes place.
- Conflicts of loyalties.
- The enforcement policy.

Problems related to these issues are intrinsic to the regulatory process, not just to the FIDCR. They confront Federal regulatory commissions whose purpose it is to oversee the economic lives of large industries (U.S. House of Representatives, 1976), they plague the regulation of nursing homes (Ruchlin, 1976), and social service Grant-in-Aid programs (Tomlinson and Mashaw, 1977), and they are issues which plague the FIDCR.

1. Clarity of Goals

Clearly stated regulatory goals are the first tenet of a successful regulatory process. In the case of the FIDCR, however, there has been confusion since their initial drafting as to what they are intended to accomplish. According to the UNCO Report, A Federal Day Care Requirement Implementation Strategy for Region V, 1975: "There had never been agreement prior to Title XX as to whether the Federal Interagency Day Care Requirements represent goals toward which a program should strive, minimum standards below which a facility should not fall, or funding requirements necessary for public subsidy." This confusion has existed despite the clear legal regulatory nature of the FIDCR. Quoting from the FIDCR: "As a condition for Federal funding, agencies administering day care programs must assure that the requirements are met in all facilities which the agencies establish, operate, or utilize with Federal support."

The existence of clearly articulated regulatory goals is not a panacea, of course. There is less confusion, for example, about the goals of the Government when it attempts to regulate monopolistic industries or when it regulates the nation's securities market. In both of these instances the public interest is defined: to protect the competitive life of the economy and to protect the citizenry from economic exploitation. Yet the problems the Government encounters in attempting to implement these regulatory goals are legendary.

In the case of the FIDCR confusion over goals has made the controversy focus almost exclusively on the provisions of individual regulations rather than on the underlying policy issues. The regulatory goals are unclear with respect to:

- The purpose of the FIDCR.
- The degree of compliance required.
- Whether the FIDCR are consistent with the goals of Title XX.

With regard to the first area, the FIDCR never specifically state that their purpose is the protection of the well-being of children. This gives rise to the question "Are the FIDCR intended to be protective of the rights and needs of children in day care?" Interestingly, children as a class have no established rights under the FIDCR because the FIDCR apply only to children in certain federally funded programs.

The question of whether the FIDCR were intended to guarantee the rights of children in federally financed day care has to be assessed in light of Congressional and Executive Branch intent. Children's rights are not mentioned in the 1967 statute which authorized the Director of OEO and the Secretary of HEW to develop a set of federal program regulations. The purpose of the regulations was to provide "a common set of program standards and regulations, and mechanisms for coordination (of day care services) at the State and local levels" (PL 90-222 Section 107 (a)). The Congress stated its case formally; it was concerned about the feasibility of administering a proliferation of day care programs. If the protection of children was not formally identified as the rationale for the FIDCR, it was nonetheless a motivating force for Congressional action. Special interest and children's lobby groups concerned about the quality of care children were receiving in federally financed day care helped to initiate the Congressional action which resulted in the 1967 mandate for Federal day care regulations (Cooper, 1976).

Nowhere in the FIDCR, HEW's interpretation of the 1967 mandate, is concern about protecting the rights and needs of children identified as the purpose or goal of the regulations. The Preface states that day care is a "service for the child, the family, and the community and is based on demonstrated needs of children and their families." (emphasis supplied - FIDCR IV). This reference to the needs of children is used to define the goals of day care, not the goals of the FIDCR. Further, in the Introduction to the FIDCR, the language of the 1967 mandate is used by HEW as the raison d'etre for the requirements.

An historical assessment of HEW's intent also shows that while the FIDCR do not identify how they relate to children, according to Cooper HEW developed the FIDCR on the Headstart model, a program oriented to

> ...such comprehensive health, nutritional, education, social and other services as the Director finds will aid the children attain their full potential... (emphasis supplied) (Steiner, 1976)

Thus, there is historical evidence to indicate that both the Congress and HEW saw the protection of children's needs and rights as an intended consequence of the FIDCR, even though they never formally stated this intent and also chose not to specify the nature of the needs and rights of children the FIDCR were intended to affect.

The second area (the degree of compliance required), refers to the continued debate as to whether the FIDCR are intended to be guidelines or regulations? The introduction to the FIDCR clearly indicates the mandatory nature of the requirements:

> ...this document sets forth Federal Interagency Requirements which day care programs must meet if they are receiving funds... (emphasis supplied)

And in the Definitions section, the FIDCR state:

> Standards consist of both Interagency requirements and recommendations. The Requirements only are presented in this document; the recommendations will be issued separately. (emphasis supplied)

That same section defines an Interagency Requirement as "a mandatory policy which is applicable to all programs and facilities funded in whole or in part through Federal appropriations."

Despite the clear language of the Introduction and Definitions, the language in the body of the FIDCR often raises questions about the status of individual provisions. For example, in describing the types of facilities to which the requirements apply, the FIDCR state:

> It is expected that a community program of day care services will require more than one type of day care facility... (1968, p. 4)

What at first appears to be a requirement later appears to be turned into a recommendation when the same paragraph concludes with the following sentence:

> While it is preferable that the three types of facilities be available, this is not a Requirement. (1968, p. 4)

In other places, the language could be interpreted either as a requirement or as advice. For example, in defining family day care:

> ...(The family day care home) is especially suitable for infants, toddlers and sibling groups and for neighborhood-based day care programs... (1968, p. 4) (emphasis supplied)

And, in discussing coordination, FIDCR provides:

> Agencies which operate more than one type of program...are encouraged to share appropriate personnel and resources... (emphasis supplied).

One can sympathize with the plight of State agencies attempting to apply this requirement. The official HEW/PSA Monitoring Guide doesn't even include this item on its checklist, yet a monitoring guide developed under an HEW funded study completely ignored the advisory language and required the sharing of personnel and resources as evidence of compliance (Unco, 1973).

As one expert commentator has observed, the language in the Requirements varies between "specificity and tone of professional advice." (Morgan, 1976, p. 77). HEW policy makers contributed to the confusion over the degree of compliance required by the FIDCR. In October 1975, Stephen Kurzman, the Assistant Secretary for Legislation, testified before Congress that HEW regarded FIDCR as goals and would work with States to develop good faith efforts to meet them rather than concentrate on strict enforcement (Kurzman, S., October 8, 1975).

The third area of controversy is whether the FIDCR as a set of Federal regulations are consistent with the goals of Title XX? With the enactment of Title XX in 1975 the specific standards of the FIDCR were, in modified form, endorsed by Congress. With the exception of the educational services requirement and the child-staff ratio for school-age children, Congress implicitly made the judgment that the FIDCR were consistent with the goals of Title XX. Title XX makes funds available to States on the condition that they: "furnish services directed to the goal of:

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families,

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

(5) securing referral or admission for institutional care when other forms of care are not appropriate,

> or providing services to individuals in institutions."

While Congress has implicitly determined that the FIDCR are consistent with the goals of Title XX, from the standpoint of the legislative purposes of Title XX inconsistencies may exist nonetheless. If it is determined that the cost of compliance with FIDCR would significantly raise the present cost of day care, for example, then it might well be argued that FIDCR are not consistent with the objectives of Title XX. (Testimony of Representative Jones (Oklahoma), a Senate Finance Committee Hearing on S. 2425, October 8, 1975.)

There is another potential contradiction. While Congress unequivocally required adherence to the FIDCR as a condition for receiving Title XX day care monies, it also fashioned a legislative program which emphasized State decision making authority. Title XX allows individual States to fashion social services programs based on each State's unique characteristics. With the exception of the FIDCR, Title XX does not establish Federal regulations for any of the social services the States may elect to provide.

> The Committee believes the States should have the ultimate decision-making authority in fashioning their own social services programs within the limits of their funding established by the Congress. Thus the Committee bill provides that the States would have maximum freedom to determine what services they will make available, the persons eligible for such services, the manner in which such services are provided, and any limitations or conditions on the receipt of such services (Senate Report No. 93-1356, 4 U.S. Cong. & Adm. News., 1972, p. 8138).

The legality, however, of placing funding conditions on State units and day care programs was supported by the courts in the recent case The State of Oklahoma v. (the) United States Department of Health, Education, and Welfare. In this case the court:

- upheld the right of Congress "...to impose terms and conditions upon which its money allotments to the states shall be disbursed."

- agreed "... that expenditures and conditions in related statutes and regulations (the FIDCR) seeking to provide for and protect the interest of children in day care is within the permitted purposes (of the regulations)."

2. Clarity of Language

The FIDCR are regulations which have the force of law. Because violations of regulations normally result in legal penalties, the language of the law and regulations should be as clear and unambiguous as possible. The Fifth Amendment to the Constitution guarantees that no person shall 'be deprived of life, liberty, or property, without due process of law.' The concept of fairness embodied in that amendment means that laws must be clear enough so that the citizen may know what is expected of him. Ambiguity in law also creates administrative unfairness; it leaves too great an opportunity for discretion in regulating conduct (Davis, 1971). Not only does such discretion threaten public confidence in the rule of law; it also is an ineffective tool for implementing governmental objectives. Regulations cannot be enforced uniformly when imprecise language permits an unmanageable variety of administrative interpretations. The clearer the law, the more uniform its application, and therefore the more predictable its results.

Some flexibility in the language of any government regulations is desirable. It permits administrators to adapt their decisions to the almost infinite variety of situations they will encounter in the field. And, a certain amount of controversy or conflict is inevitable and healthy. There is no rule so unambiguously stated or so universal in its apparent application that someone won't challenge it. Further, the process of challenge can often initiate activities for needed refinement and constructive change. However, when rules or laws are subject to controversy at too many points, enforcement officials are paralyzed by uncertainty, the concerned public is discouraged from getting involved and those who would ignore the rules for ulterior motives are emboldened. That is the present situation with the FIDCR.

The FIDCR carry with them serious sanctions for non-compliance and embody a national policy. If Federal requirements are appropriate at all it is because the goals they are designed to achieve require that they be universally met. Otherwise, State or local standards might be sufficient. Therefore, the FIDCR should be characterized by a high degree of specificity and measurability. Unfortunately this is not the case. There are significant problems in the language of the specific program requirements which hinder enforceability.

The child-staff ratios of the FIDCR are considered to be one of the most important sections of the requirements. Yet the imprecision and incomplete language of this section has opened the way to controversy.

Consider the difficulty of interpreting what is prescribed for child-staff ratios in family day care situations. In two places the FIDCR limit the number of children who may be served in a family day care home to no more than six children in the three through 14 age bracket, five children in the zero through six age group, including the family day care mother's own children. (FIDCR 1968, p. 4, 5 & 6.) The language contains no clues to the solution of two significant issues related to establishing family day care child-staff ratios:

a. Do children of the family day care operator count as part of the program if they are present only after school?

b. May a child of the caregiver be counted as a caregiver himself and not as a care recipient in the program?

This same requirement poses difficulties in determining the size of family day care groups. For children from birth through six years, "no more than two children under two and no more than five in total..." For children aged three through 14, "no more than six children...." (FIDCR 1968, p. 5.) Because these two requirements affect age ranges which overlap it is impossible to apply the grouping limits to many combinations of children. Consider whether FIDCR is violated when there are five three year olds and one 13 year old. On the one hand, FIDCR permits six children ages three through 14. Yet it also places a limit of five children if the children are zero through six.

Similarly, in a footnote to the group size limitations in a family day care home, FIDCR requires two adults "if one or more of the children were retarded, emotionally disturbed or handicapped and needed more than usual care." There is no indication of how the judgment is to be made as to the need for "more than usual care." Someone must decide the degree of retardation, emotional disturbance or physical handicap. Does "more than the usual" mean more than the usual handicapped child or more than the usual "normal" child?

Comparable difficulties exist when it comes to computing child-staff ratios for day care centers. The FIDCR state:

> "Three to 4 years. No more than 15 in a group with an adult and sufficient assistants, supplemented by volunteers, so that the total ratio of children to adults is normally not greater than 5 to 1." (1968, p. 6.) (emphasis supplied)

The language of this requirement presents many unanswered questions to the enforcer and to the provider. What are the dimensions of "normally not greater than"? Are child-staff ratios to be weighted to children's actual participation time in a program? At what point or points in time within the day is the ratio to be computed? Are child-staff ratios to be determined by a center's enrollment and staff pay roll? What adults should be counted in determining the child-staff ratio? All adults working in the program or only those who spend some percentage of each day working directly with children?

Enforcement of the FIDCR is also severely hampered because there are conflicts within the regulations as to the meaning and purpose of individual provisions. Section VII: ADMINISTRATION AND COORDINATION in the FIDCR states:

> "... the administering agency should allow waivers by the operating agency only with respect to such administrative matters and procedures as are related to their other functions as profitmaking or private non-profit organizations;..." (1968, p. 16.)

The grounds for waiver identified in this section are inconsistent with the requirements identified in the FIDCR Introduction:

> "Requirements can be waived when the administering agency can show that the requested waiver may advance innovation and experimentation and extend services without loss of quality in the facility." (1968, p. 3.)

The provisions for waivers in the Introduction set out relatively narrow grounds and require that each waiver be approved by the Federal regional office. While the conditions for waivers identified in the Administration and Coordination section of the FIDCR define potentially broader conditions for the granting of waivers. The definition of "administrative matters and procedures" is left to the discretion of the administering agency, with the proviso that the agency cannot waive the parent participation requirement and the provision for the total range of services. Further, the wording of section VII could support the granting of waivers even for what could be considered basic minimum standards, such as health, safety and space requirements.

Another enforcement problem occurs because the language of the FIDCR is sufficiently vague and imprecise to create confusion over determining accountability. Illustration of this problem can be found in Section V: HEALTH AND NUTRITION SERVICES.

"Arrangements must be made for medical and dental care..." (1968, p. 11.) Is it the child's parent, the administering agency or the program provider's responsibility to arrange and pay for these health services?

"The facility must provide adequate and nutritious meals and snacks..." (1968, p. 12.) The words adequate and nutritious are practically impossible to apply uniformly. A study of uniformity of application of a similar Illinois State requirement found that licensers could not uniformly agree about what constituted adequate and nutritious food.*

"The operating or administering agency must be sure that adequate health records are maintained on every child and every staff member..." (1968, p. 13.) Determining the adequacy of health records does not seem to be apparent to trained licensers. In the same Illinois study referred to above, trained licensers had a greater degree of difficulty agreeing as to whether a program maintained adequate health records than they did in agreeing about the qualitative personal characteristics of a caregiver.

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*Illinois Licensing Study

The ambiguity and lack of specificity of the language of the FIDCR also hinders consumer involvement. This involvement cannot occur if the public cannot understand or easily use the regulations to personally assess program compliance. If, as reported (Unco-Region V Study, 1975; REAP Associates, 1976), State program personnel and day care providers are experiencing difficulty interpreting the FIDCR, certainly the uninitiated public will have the same difficulties. Look, for example, at the problem the consumer faces in trying to determine if a day care program meets the FIDCR health and safety requirements. All that the FIDCR requires is "the facility and grounds used by the children must meet the requirements of the appropriate safety and sanitation authorities." The regulations provide no useful information the parent can readily use. Further, because the FIDCR refer to local codes and do not specify who or what group constitutes "appropriate safety and sanitation authorities," the consumer does not know which local codes apply. A major finding of the 1968 OCD sponsored Day Care Licensing Study is that health and safety codes are not developed and are not implemented by one agency. Consider for example, the situation in Massachusetts as reported by Gwen Morgan, a nationally known expert in day care licensing. "In the ten years as a licensing consultant to the State of Massachusetts I have not been able to get hold of all the Massachusetts health codes adopted at different times by different divisions within the public health bureaucracy, nor have I been able to receive solid information about which provisions apply to day care" (Pizzo and Aronson, 1976, p. 135).

So far as the text of the FIDCR is concerned, a great many problems could almost certainly be eliminated through a judicious tightening and clarifying of the language. Done with sufficient sensitivity and common sense, this refining of the FIDCR could ease a good many of the above illustrated difficulties. This would be only an ameliorative step. To get at the heart of the problem of applying quality standards to federally funded day care in an effective and meaningful fashion, several tasks addressing the greater difficulty of implementing a Federal regulatory role must be undertaken.

3. Public Involvement

Public involvement in the development and implementation of regulations is a critical ingredient of a successful regulatory program. According to the 1976 House of Representatives report on regulatory reform,

> "...many of the flaws in regulation are related to a lack of agency responsiveness to the consuming public it was created to serve. Responsiveness is essential for two reasons: (1) the very legitimacy of agency action grows out of respect for the views of those affected and, (2) acceptance of agency action usually depends on consultation with all affected groups, who can help agencies to eliminate potential problems of regulation before they go in effect" (U.S. House of Representatives, 1976, p. 539).

This report points out that the need for public input is especially critical in the area of social services; "In particular, regulation relating to health and safety needs to operate in a setting less dominated by political interferences from, or on behalf of, regulated industry..." (p. 540) because, "The public well-being is the most difficult to qualify and therefore most likely to be undervalued."

In general, meaningful public participation depends on:

1) informing the public that it has a role to play in the regulatory process,
2) obtaining a mandate which clearly defines the public's roles and responsibilities,
3) creating operational mechanisms for getting public input,
4) the availability of resources for public participation, and
5) having informed consumers.

If these five conditions are not met, public involvement is likely to be haphazard and ineffectual. And both proponents and opponents of the FIDCR have one position in common: both decry the lack of public involvement in formulating and implementing the regulations. In the case of the FIDCR, the Federal Government has not insured public participation either through regulatory policy or Federal leadership.

The first criterion requires that the public be informed it has a role to play. People who use the services of federally financed day care are not well informed about the FIDCR's existence, much less about their right to take an active role in shaping the regulatory process (Unco-National Child Care Consumer Study, 1975).

The second criterion requires the existence of a mandate which defines the public's roles and responsibilities. Legislatively, the FIDCR is part of Title XX and as such is subject to the sunshine provisions which require public involvement in the planning process for the allocation of Title XX monies. These provisions apply only to the planning process however, and not to the regulatory function. Two such mandates exist in the Title XX FIDCR, but neither is particularly meaningful.

The FIDCR address the issue in the section on parent involvement (FIDCR, Section VII), but the provisions identified do not define a meaningful role for public participation. Their focus is parent participation in the day care program, not in the regulatory process. In addition, the language of the parent participation requirements does not provide enough substance to make them operational. Further, the imprecision of the language in these requirements makes this section of the FIDCR difficult to enforce.

The third criterion requires an operational mechanism for getting public input. There has to be, in other words, an unencumbered, formalized process which gives the public a way to participate in the regulatory process. "The failure of regulatory agencies to provide a structure for public participation in their proceedings undercuts the legitimacy of agency actions" (U.S. House of Representatives, 1976, p. 541).

Procedures which are complicated or time consuming and costly to implement, tend to foil the purposes of regulation. Large special interest groups may sometimes be able to make their way through 'red tape procedures' but it is nearly impossible for individuals to devote the time and energy needed to do so.

The FIDCR attempted to define a mechanism for public involvement when it required the establishment of the policy advisory committees, but the definition was incomplete. The requirement was not specific enough to make it operational. In addition, the committees were by definition exclusionary. They were intended to provide a mechanism for input from a small, select group of the public; they were not intended to serve as an entry point for the general public.

The fourth criterion requires that the public have the needed resources to participate in the regulatory process. According to the Senate Report on Regulatory Reform, "The single greatest obstacle to active public participation in regulatory proceedings is the lack of financial resources by potential participants to meet the great costs of formal participation. Lack of funds have prevented public participation in many important proceedings" (U.S. Senate, 1977, p. vii).

The position that "agencies respond to the inputs they receive" (U.S. Senate, 1977, p. 2) or the squeaky wheel theory (if the wheel squeaks loudly enough someone will respond), implies that a minimum level of organization and sophistication is needed to participate and, therefore, a minimum level of incurred costs. It takes money to organize people to write letters, canvass, travel to hearings, hire lawyers and purchase the service of expert witnesses. In the real world of day care the majority of local advocacy groups and day care providers must struggle to keep their programs financially solvent. They do not have the resources necessary to play a significant role in national policy formulation. As a result, only a handful of national level advocacy groups have seriously participated in the present Federal day care regulatory process. And these groups do not necessarily reflect the concerns of all sectors of the day care world (Steiner, 1976).

The fifth criterion requires an informed consumer. Only in the last several years has the education of the consumer become a serious issue for Government, even though Madison Avenue has been working on the consumer for decades. Consumer practices can affect the regulatory process positively if consumer purchasing behavior re-enforces the goals of the regulations. To accomplish this, those who are responsible for regulating have to inform the general public about the goals and purposes of the regulations. They have to take an active role in helping the public become informed consumers. Market researchers and national consumer protection groups have found that this effort pays off: consumers are willing and eager to become better informed and will change their purchasing practices. The Federal Government has been delinquent in assuming a leadership role in informing the public about the goals and purposes of the FIDCR. As a consequence, the needed relationship between the regulator and the consumer has never materialized.

4. The Regulatory Climate

It may appear simplistic to say that attitudes about regulation influence the success or failure of the regulatory process. Vital as it obviously is, however, building and maintaining a consensus supporting a regulatory program is far from simple or easy to accomplish. And once attained, public support is not always easy to maintain. For example, in 1975 a consensus of public opinion existed which was strong enough to pass State and Federal regulations establishing a national 55 mph speed limit. Yet maintaining observance of it has been a matter of constant struggle marked by seeming indifference, and even active opposition, by the public.

The FIDCR is no exception. The range and intensity of negative and positive attitudes surrounding the FIDCR provisions have created a climate laden with emotion and controversy. Such a climate is scarcely conducive to the effective enforcement of the regulations or to public perception of them as a legitimate and proper exercise of Federal authority. Debate over certain aspects of the FIDCR resulted in two class action suits being filed against DHEW. Debate about other aspects of the FIDCR contributed to the decision to make the FIDCR subject to Federal Financial Participation (FFP) regulations under Title XX.* For the States filing the law suits, the lack of favorable consensus meant that effort was diverted from implementing the FIDCR to challenging it in court. And while the decision on the FFP compliance requirement was seen as a positive step by advocates of firm enforcement, it also spurred the States to lobby for and get a moratorium on the enforcement of child-staff ratios of the Title XX FIDCR. In both cases the intended purposes of the FIDCR were undermined.

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*Personal communication with Sidney Johnson.

Controversy over the FIDCR has been especially persistent because a strong base of support for Federal supervision of day care quality was never attained originally. The initiative to press for Federal regulation came from two fronts: the day care and child advocate groups which were concerned about the quality of the services being provided, and members of Congress who were worried about the fragmentation of the administration and quality control procedures of federally sponsored day care. There was virtually no national demand for the Federal regulation of day care services, no national consensus that this was a legitimate and necessary role for the Federal Government to assume. Such national support could be achieved only when the public became convinced that Federal regulation of day care was important and worth the problems that inevitably attend Federal regulation. The leadership necessary to build such a consensus never materialized. The Federal Government published the FIDCR in 1968 but took no follow-up action. Receiving little guidance or technical assistance in implementing regulations, States had to flounder through as best they could. Nor was the implementation process monitored and influenced by child lobby and advocate groups which had initiated the demand for the regulations. These groups lost their unity and had little impact on the administrative process.

The lack of strong Federal leadership has not only left State officials adrift and at the mercy of FIDCR's critics but has also had an impact on States' attitudes toward the FIDCR. The Unco Region V Report identifies this lack of strong Federal leadership as one of the major barriers to enforcement. In the opinion of those individuals interviewed, the States had looked to the Federal Government to provide them with direction in how to implement the FIDCR. When it was not forthcoming, some States interpreted the FIDCR according to their own interests, which were not always compatible with the interest of the Federal Government. Other States interpreted the absence of technical assistance as an indication that the Federal Government was not committed to enforcing the FIDCR and tailored their own commitment to enforcement accordingly (American Public Welfare Association, 1977; REAP Associates, 1976; and Unco, Region V Study, 1975).

5. Conflict of Loyalties

The regulatory process has the effect of creating new loyalties and relationships. As Ruchlin notes "...the simplistic view of regulation assumes that the goal is to protect the public interest, but students of regulation view the process as an arena where various "actors" attempt to maximize their self interest" (Ruchlin, 1976, p. 10).

The so-called "dominant interest group" theory of regulation sheds light on the ways in which informal loyalties influence the regulatory process. This theory holds that the regulatory process becomes dominated by one group or coalition representing a particular interest or point of view and this group eventually subverts the goals and purposes of the regulatory process to its own self interest. It is able to accomplish this task because "regulators ultimately recognize that their survival is dependent on their willingness to accept and champion the viewpoint of the regulated." The consequence is "...the regulated 'capture' the regulators and dominate the regulatory process" (Ruchlin, 1976, p. 10).

Aspects of the dominant interest group theory of regulation apply to the Federal regulatory process implemented to enforce the FIDCR. The actors in the case of the FIDCR are State and regional employees who have a legal duty to enforce the FIDCR but who also have personal loyalties that tend to reflect the interest of the States or regional offices they work for.

These conflicts of loyalty are manifested in many ways. One is in the policies which individual States adopt to implement and enforce the FIDCR. Some States clearly adopt and implement FIDCR enforcement policies which conform to the spirit of the law. Other States adopt policies which, viewed realistically, are so loosely defined that they do little to ensure that the FIDCR are enforced. Yet these same policies are sufficient to ensure the continued flow of Federal funds into the States

(Unco --, APWA --). The same issue of conflicting loyalties occurs at the local level when State and local licensing personnel have such close ties to the day care providers supposedly being regulated that the FIDCR are interpreted in ways that continue the flow of Federal funds even though the programs are not in full compliance with all provisions of the FIDCR.

Another dimension of conflicting loyalties exists when State licensing personnel play the dual role of technical assistance provider and program monitor (Morgan, 1976; Class et al., 1976; and Costin et al., 1976). The underlying intent and purpose of these two tasks serve different ends and involve different loyalties. Program monitoring is a quality control task where the focus of activity is to assess program compliance with a given set of standards. This requires a clear loyalty to the law, objectivity and a sense of personal distance between the worker and those being monitored. The provision of technical assistance, on the other hand, is a supportive and "educating" task which requires a commitment on the part of the State worker to assist a particular program in its effort to achieve a goal. The State worker who must assume dual roles such as this faces the dilemma of conflicting loyalties. It is difficult to work with people to help them meet requirements and then invoke sanctions against them for failing to do so.

In addition, the bringing of sanctions can imply an admission of failure on the part of the State worker in his or her role as a technical assistant, and a violation of the trust relationship between the worker and the provider.

At the State level another problem of conflict of loyalties can occur when the regulator is also the purchaser of the day care service. A shortage of available day care can influence the judgments made about the adequacy of existing resources. State licensing offices are familiar with these issues, and a number of solutions are being suggested and tried to retain an objective regulatory stance. Some States have separated technical assistance, consultation, and training functions from the regulatory tasks by assigning different personnel to perform these tasks, by purchasing them from outside consultants selected by the providers of care, or through training staff to differentiate the roles they play.

Some States have placed the licensing function in a different agency.

6. Enforcement Policies

The underlying principle of the regulatory process is conformity to a set of rules. The intent to enforce regulations distinguishes a Federal regulatory role from a guidance or technical assistance role. An enforcement policy requires the imposition of penalties for non-compliance and a definition of the procedures for imposing those penalties. By establishing such penalties the Federal Government signifies the importance it places on the purposes, or goals, of each of the regulations. The procedures it then follows in imposing the penalties determines whether the sanctions are applied in a fair and equitable manner. Finally, only by actually applying the established penalties can the Federal Government show its firm intention to demand compliance with a set of regulations. How successfully the Federal Government can design and implement this enforcement mechanism has a bearing on its ability to realize the intent of the regulation. To assess the Federal Government's role in regulating day care through the FIDCR, it is important to recognize that there is no enforcement mechanism identified in any of the nine sections of the FIDCR. The FIDCR as part of the Title XX statute is subject to the Title XX regulations. These regulations require the States to administer and enforce the FIDCR and, establishes Federal penalties for State non-compliance.

Penalties for Non-compliance. The willingness of people to support a law requires that the sanctions applied to the law breaker reflect the relative importance of the law...the penalty must fit the crime. In the case of the FIDCR the Title XX regulations identify a range of penalties for State non-compliance:

- The Secretary of HEW can withhold total payment of State funds under Title XX, until he is satisfied that there will no longer be any such failure to comply (Section 228.13), or
- The Secretary of HEW can penalize a State 3 percent of its entire Title XX monies for a period of time the Secretary determines there is non-compliance (Section 228.13).

- States will be denied funds for day care services which are purchased outside the child's home if these services do not meet the FIDCR (Section 228.42).

The first two conditions are specifically aimed at the administrative requirements of Title XX. Either of these penalties can be imposed on a State if it fails to exercise its responsibility to establish and implement administrative activities to ensure FFP day care programs meet the FIDCR. If a State fails to meet its administrative responsibilities the Secretary of HEW has the right to either temporarily withhold monies or to penalize a State a percentage of their Title XX funds. The third condition applies specifically to actual day care services provided. Under any condition the Federal Government can refuse to pay a State for day care services which do not meet the FIDCR. If an audit finds non-compliance, the State must either reimburse the Federal Government for all Federal monies paid to individual day care programs which are not in 100 percent compliance with the FIDCR, or it can be prohibited from requesting reimbursement of part of its Title XX allocations. This makes adherence to the FIDCR a condition of Federal Financial Participation (FFP).

The withholding of all or a percentage of the Federal Government's financial allocation to a State is a generally accepted practice. In the case of Title XX these penalties apply when States fail to meet any of the administrative requirements of the program. There are problems, however, in determining what conditions warrant the application of these penalties. Quoting from the Title XX regulations:

> "Where a services plan provides for child day care services, the State plan shall provide for the establishment or designation of a State authority or authorities,....,which shall be responsible for establishing and maintaining standards for such services.... (emphasis added -- Section 228.13).

The confusion arises in trying to determine what constitutes an acceptable level of effort on the part of a State in "maintaining standards." To be in compliance with this regulation does a State have to ensure that through its administrative activities all or some percentage of its FFP programs meet the FIDCR? Is New York, for example, a State with 540 federally funded day care centers, 76 of which are estimated to be out of compliance with the FIDCR, meeting or violating this requirement (Abt, NDCS Supply Study, 1977)?

There has been strong sentiment from day care providers and State administrators that the penalties attached to making compliance with the FIDCR an FFP issue are out of proportion to the relative merits of the FIDCR as a regulatory document and, that such penalties are also out of proportion to the relative importance the Federal Government has placed on the Federal regulation of day care. The merits of the FIDCR as a regulatory document have been seriously questioned. The lack of specificity of language in the individual sections of the FIDCR make it difficult, if not impossible, to determine if there is 100 percent compliance with each of the provisions. Compounding the enforcement problems which exist with the FIDCR document is the view of many State personnel that the Federal Government has never explicitly or unambiguously stated that the Federal regulation of day care is of such major concern that non-compliance with the FIDCR warrants the application of penalties as drastic as those required by a FFP condition. As pointed out earlier in this chapter, it was as late as October 8, 1975 -- months after the enactment of Title XX that the Assistant Secretary of Legislation of HEW testified before the Senate Committee on Finance that HEW regarded FIDCR as goals and the Federal Government's role as supportive in helping States meet the FIDCR. Controversy about denying Federal funds for failure to meet the FIDCR was a motivating factor for the three Congressional moratoriums on the FIDCR child-staff ratio requirements.

There are alternatives to the total denial or withholding of Federal funds to obtain compliance. Some of those offered by Tomlinson and Mashaw (1977), two experts in the field, include:

- transferring grants or awarding subsequent grants to a different grantee.
- seeking Congressional statutes making violation of Federal requirements a civil or criminal offense, subject to fine or imprisonment.
- or even more dramatically, seeking Congressional statute which provides "for the removal from office of State and local officials who violate Federal standards in the administration of a Federal grant" (p. 690).

- publicizing through local news media, meetings... cases where there is grantee non-compliance.
- bringing a law suit in a Federal court against a grantee to compel the grantee to observe Federal requirements (p. 681).
- disallowing program or project expenditures which do not conform to Federal requirements (p. 677).
- imposing special administrative conditions or requirements on a grantee, for example, requiring retroactive payment for services purchased which did not comply with Federal regulations (p. 688).

Enforcement Procedures. Theoretically the bottom line of an enforcement policy is the application of sanctions. Realistically the bottom line is the process of challenge and negotiation which occurs when the application of sanctions is threatened. This process of challenge frequently produces situations where acceptable compromises are agreed to as an alternative to enforcing penalties. Negotiation is the heart of a regulatory policy and for it to take place in a just and equitable manner it should not occur informally or haphazardly. This requires that procedures be unambiguous in defining appropriate rules of conduct, be interpretable to those affected by the regulations, and be well publicized.

There should be an established set of procedures which formalize conditions for both enacting and appealing the enforcement of sanctions. These procedures should be specified in such a manner that those affected by the regulations are not hampered in their attempts to play a role in the enforcement of those regulations or in their right to challenge perceived abuses. Reliance on litigation as a compliance technique for social services is an obvious example. Litigation has been aptly characterized as a slow and expensive process producing little positive effect (Tomlinson and Mashaw, 1977). "It has been recognized that while legal barriers to public intervention have been reduced substantially in the last ten years, the current mechanisms are clearly insufficient to provide effective participation by customarily unrepresented interests. Usually the interest of the individual is too small to justify the cost of participation in the decision" (U.S. House of Representatives, 1976, p. 475).

Title XX establishes two different sets of conditions for applying FIDCR related penalties: (1) the procedures identified for withholding all or part of a State's

Title XX monies, and (2) the procedures followed to deny payment for day care services which do not meet the FIDCR.

The Secretary of HEW has the discretion to apply penalties for State non-compliance with the requirement to establish and enforce FIDCR administrative activities only after the State has been put on notice and has had an opportunity for a formal hearing conforming to administrative procedures developed for the Social Security program (45 CFR, Section 213).

The application of FFP penalites follows the standard audit procedure. An HEW regional auditor informs a State that one or more Title XX funded day care programs have been found out of compliance with the FIDCR and requests the State to reimburse the Federal Government for all Federal monies spent to purchase care from these programs for the period of time the programs have been judged out of compliance. There are no provisions established in the Title XX regulations for formal hearings to establish the legitimacy of an auditors claim that a Title XX funded day care program has been found to be out of compliance with the FIDCR. A State can challenge audit findings only after penalties have been applied.

The FFP enforcement procedures exclude the day care provider from the negotiation and challenge process. Title XX regulates the State and has no provision which allows the provider to challenge the Federal Government directly. When a day care provider is found out of compliance with the FIDCR, the State must negotiate with the Federal Government. If the provider wishes to challenge the auditors findings he or she must work through the State.

A theme that has been frequently advanced in this chapter is the importance of developing a regulatory process which is responsive to the needs of those being regulated and which encourages public input. Nowhere would this need appear to be greater than in the enforcement of regulations. The situation that presently exists, referred to above, is that penalties and enforcement procedures identified in Title XX relate only to the State. States have the responsibility for enforcing the FIDCR and can exercise their own discretion in defining non-compliance penalties and enforcement procedures for applying sanctions. Five States, for example, have no identified procedures for denying, suspending, or revoking

State day care licenses (Lawrence Johnson Assoc). A question which needs to be raised is whether the Federal Government should assume a role for ensuring equitable enforcement of the FIDCR. In an article about the problems HEW faces when it enforces regulations, the authors (Tomlinson and Mashaw), suggest two approaches the Federal Government could take to foster the equitable enforcement of regulations:

- Requiring, as a precondition for receiving Federal monies, that the grantee establish a formal, publicized complaint mechanism with prescribed time periods for the disposition of complaints.
- Having the Federal agency assume the responsibility of informing the public affected by a federally regulated program about the availability of complaint procedures.

On the whole, the Federal Government has shown little commitment to enforce the FIDCR or to impose any penalties. In no instance has the Federal Government withheld or denied Federal funds. Some of the reasons for this lack of enforcement are:

- The imprecision of the language of the FIDCR has made it difficult to determine what constitutes compliance and to apply sanctions in an equitable manner.

- Many State and local administrators and day care providers believe that the penalty of denying funds is too harsh for non-compliance considering the ambiguity of the purpose and language of the regulations.

- Regional offices responsible for interpreting the FIDCR give conflicting interpretations of individual FIDCR requirements.

SECTION III: STATE IMPLEMENTATION

The responsibility for establishing and maintaining an effective regulatory policy rests with the Federal Government; the responsibility for administering national regulatory policy is sometimes assumed by the Federal Government and sometimes delegated to State or local Governments. In the case of the FIDCR administrative responsibility presently rests with the States. The Federal Government does not prescribe any system of administrative procedures to be used by the States in implementing the FIDCR. Rather, each State must assume the responsibility for developing and organizing its own administrative procedures and policies to ensure State and program compliance with the individual FIDCR sections. In responding to this task States must balance their needs with the demands placed upon them by the presence of Federal regulations. This section will discuss the consequences for State operations and policies when procedures to administer and enforce the FIDCR are implemented.

In some instances the administrative tasks that States must perform are specified in the FIDCR. The FIDCR evaluation section, for example, requires States to monitor FFP day care programs. Where the FIDCR do not specify required administrative tasks States must first, identify new tasks, and then, either use existing procedures required by other regulations to accomplish them or establish new procedures.

Listed below are the administrative functions States generally implement to meet the Title XX FIDCR administrative requirements (Pacific Consultants, 1976; APWA 1977, REAP 1976).

Activities To Ensure FIDCR Compliance

- Licensing - activities undertaken to ensure that a provider is in compliance with State or local codes and with the FIDCR provisions. Issuance of a license is generally preceded by an application process and on-site visits by agency personnel and local fire and sanitation inspectors.

- Monitoring - periodic assessment of day care facilities to ensure their compliance with State and Federal day care regulations. Monitoring is an administrative activity which is distinct from licensing and relicensing. The frequency of this activity varies widely from State to State.

General State Management Activities

- Information and Referral - activities required to collect and disseminate information to potential clients about existing day care resources. The process of client placement varies among States. In some States client placement is the job of the department or agency administering the Title XX day care program; in other States it is the responsibility of the client.

- Client Eligibility Determination - the process of identifying criteria for clients' eligibility for FFP day care and verifying the legitimacy of clients' claims for service. Under Title XX, individuals may be eligible for services based on their income or their status as current recipients of public assistance. States differ in how they assign responsibility for this task. In some States the program provider determines client eligibility; in others it is the task of the State or local office responsible for the State Title XX day care program.

- Fiscal Management and Reimbursement - accounting and quality control functions required to process and oversee the receipt and disbursement of day care funds. A State's reimbursement policies determine reimbursement rates and the conditions under which a provider can claim monies. These policies differ for each State and are frequently different within States.

- Purchase of Service - the process of developing contractual arrangements with day care providers for the provision of FFP day care. The purchase of service contract, or agreement, is a legal document which:

  --establishes the legal base for the purchase of day care with Title XX monies.

  --describes the responsibilities of both parties to the contract.

  --describes with varying degrees of specificity the type of day care being purchased and the number of children for whom services will be reimbursed.

- Technical Assistance - task-oriented training which is provided for specific management or administrative functions. Technical assistance for day care providers can include information and aide in the development of skills in areas such as reimbursement policies, record keeping, reporting and contract procedures.

- Training - programs and activities designed to upgrade the skills and knowledge of day care providers, administering agency staff and parents. Activities undertaken may vary in intensity from distributing materials and scheduling workshops, to offering one-to-one assistance.

- Planning - establishing program objectives and identifying systematic procedures to accomplish these goals.

- Coordination of Service - the process of ensuring the delivery of health, nutrition and supportive social services.

For many States, the activities described above are the same ones that are undertaken to administer and enforce State licensing codes. FIDCR compliance activities often piggyback on existing management activities. Since each State has individual needs and historical conditions, each organizes and implements the FIDCR differently. There is, in fact, great variety in the ways States and local

Governments organize to comply with the FIDCR. The differences are reflected in the way they assign and implement FIDCR related functions.

State FIDCR enforcement and management activities are organized according to one of three administrative models: State administered systems, State supervised/county administered systems, and a combination system which is administered at both the State and county levels. The distinguishing characteristics of each of these models are the sites of decision making and implementation activities. In a State administered system decision making responsibilities rest solely with the State. While there may be regional offices, they are not autonomous and most implementation procedures are uniformly performed throughout the State. In a State supervised/county administered system decision making responsibilities rest with the counties or districts and the counties have considerable autonomy to act within established State guidelines. Under this system programs within a State may be operated in a number of different ways. 1/ A combination system defines itself, responsibility for administrative functions are shared by both the State and county. The most frequently implemented model is the centralized or State administered system; thirty-three (33) States now implement this system (including the District of Columbia). Fifteen (15) States implement a decentralized, State supervised/county administered system and three (3) States operate a combination system (Pacific Consultants, 1976).

The fact that thirty-three States operate a centralized system does not mean, however, that there is a similarity in the way these States designate responsibilities, utilize staff or interpret their role. Table 6 illustrates the range of differences which exist in States implementing the same administrative model. Arizona, Illinois, Louisiana and Pennsylvania are all State administered systems; yet

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1/ In New York, for example, which operates on a State supervised/county administered system, the counties operate very different programs. In Albany, county decisions and administrative functions originate in one central office, while in Westchester County ten separate offices each assume these responsibilities for their respective areas.

TABLE 6 Assignment of Responsibilities in Four States Following the Same Administrative Model

Administrative Functions	Arizona	Illinois	Louisiana	Pennsylvania
Level of State government responsible for licensing:				
a. Day care centers	a. State	a. State	a. District	a. State and district
b. Family day care	b. Local	b. State	b. Local	b. District
Staff responsible for monitoring:				
a. Day care centers	a. Licensing workers 1/ and special day care monitors 2/	a. Licensing workers, special day care monitors, and POS unit 3/	a. POS unit	a. Licensing workers
b. Family day care	b. Day care workers 4/	b. POS unit and licensing workers	b. Day care workers	b. Licensing workers
Staff responsible for eligibility determination	Social service, day care workers 5/	Title XX eligibility centers	Social service, day care workers and providers 6/	Social service, day care workers and providers
Level of State Government responsible for fiscal matters	State	State	State	State and local Government unit

1/ Licensing workers: workers whose primary job is licensing or approving facilities.

2/ Special day care monitors: workers who have monitoring as their primary responsibility and who only monitor child day care programs.

3/ POS unit: members of purchase of service unit who monitor for compliance with contract provisions.

4/ Day care workers: workers who have multiple child day care management functions (other than licensing) in addition to monitoring functions, including information and referral, client eligibility, training, and technical assistance.

5/ Social service, day care workers: social service and day care workers, generally part of the Title XX designated agency.

6/ Providers: individuals or programs offering day care.

Source: Pacific Consultants, Child Day Care Management Study, Vol. 1, 1976.

there are substantial differences in the way they assign task responsibilities and in where they locate units within the State organization.

States also differ as to what administrative functions they emphasize. There is no uniform interpretation of how States should implement administrative functions, and it is impossible to draw any conclusions about the effectiveness of a State's FIDCR enforcement system from looking at the way in which it implements any one administrative function. State and local Governments fashion their programs by responding to such diverse forces as the State's level of commitment to enforcing day care regulations, past experiences with successes and failures, fiscal constraints, organizational models used to implement State licensing codes and personnel interests and availability. As a result, the level of effort a State expends in one area does not necessarily reflect the same level of commitment to implementing other administrative functions. Some States, for example, prefer to concentrate their energies on training activities while others focus on licensing.

The organizational model a State follows to implement FIDCR enforcement and administrative tasks does not appear to be related to how effective a State is in complying with the regulations (APWA, 1977, REAP, 1976). For example, the hypothesis that a State's effectiveness in complying with the FIDCR is related to the frequency of State monitoring contact has no validity when one looks at the available data. In North Carolina, which is shown to have a high record of compliance with the FIDCR child to staff ratios (Abt Supply, 1977), day care centers are monitored on an annual basis. Florida, on the other hand, has a less impressive history in enforcing the FIDCR and monitors semi-annually. And in the District of Columbia, which has one of the five lowest records of compliance with the FIDCR in FFP day care centers in the country, monitoring contact with day care centers is established on a monthly basis (Pacific Consultants, 1976).

Of the nine elements of day care covered by the FIDCR, there is only one--that of child-staff ratio--for which national data indicate the success or failure of States in insuring program compliance. Even in this area, caution must be used in interpreting the data since the compliance level for center care looks different depending on how the child-staff ratios are calculated.

The Abt Supply Study (1978) estimates that, on a national basis, between 32 and 63 percent of federally funded day care center programs comply with the FIDCR child-staff ratios. 2/ The large discrepancy exists because it is possible to measure child-staff ratios either liberally or conservatively and each interpretation produces radically different results. Similar problems of interpretation exist in determining compliance with the child-staff ratios in family day care homes producing extreme variations in compliance data. When child-staff ratios are calculated including the caregiver's children under age 14, 36 percent of family day care homes have six or more children. When a less stringent measurement policy is used, and only the caregiver's children under age six are included in the ratio count, only four percent of regulated homes have six or more children (Caregivers Survey, 1977). 3/

For the other FIDCR requirements there is only inconclusive, anecdotal information on compliance because it is difficult to determine what constitutes compliance. As mentioned earlier, the lack of specificity in the language of the FIDCR leaves them open to wide variations in interpretation. In addition, interpretive materials that could be used to standardize the implementation of the FIDCR were not made available to the States until 1977.

As a consequence of the lack of compliance data, the answer to the policy question of whether States should continue to assume the responsibility for enforcing and administering the FIDCR cannot be based on the relative success States have had in ensuring day care provider compliance.

2/ Table 4.5 and Figure 4.2 in the "Report on the Appropriateness of the Federal Interagency Day Care Requirements" illustrate State compliance levels for FFP day care programs, where national compliance is estimated at 63 percent using a liberal interpretation of calculating child-staff ratios. For further details see Chapter III in the same report.

3/ See Chapter III of "Report on the Appropriateness of the Federal Interagency Day Care Requirements" for a discussion of problems in calculating FIDCR child-staff ratios.

Establishing compliance with the FIDCR affects State administrative practices and policies. Determining what the specific consequences are to State operations, however, is a difficult task. It is almost impossible to separate the additional administrative costs and staff demands imposed by enforcement activities from other program costs. In addition, since the procedures that States follow to implement the FIDCR are frequently just an expansion of activities organized to administer State licensing codes, it is not always possible to determine the additional time and effort needed for activities designed to ensure compliance with the FIDCR. It is also difficult to know where to attribute the responsibility for problems States face in implementing the FIDCR. Problems may exist because of the additional demands the FIDCR place on State systems or problems may exist because of weaknesses already occurring in the State process. Finally, there are major limitations in the information available on this subject. The four major resources for this area, the "Tri-State Day Care Management Study," the "Title XX FIDCR Impact Study," the "Child Day Care Management Study," and the study on "The Federal Interagency Day Care Requirements: an Assessment of Barriers to Compliance in Region V," are primarily descriptive pieces which rely on individual opinion and observed behavior in a limited number of situations. The findings reflect the views of individuals interviewed and none of the information collected was systematically validated.

Some States do, however, appear to be more successful than others in implementing the FIDCR and the question remains: Why?

In a ten State survey conducted by R.E.A.P. Associates in 1977 for the American Public Welfare Association it was found that States judged to be successful shared certain characteristics:

> Good management practices seemed to pay off. States which could efficiently coordinate services and internal administrative procedures, and ensure an exchange of appropriate information appeared to be better able to deal with the demands of the FIDCR.
>
> The focus of state management activities, like the general quality of management practices, appeared to affect compliance. In States that had high compliance levels with the FIDCR, administering agency

staff appeared to spend a significant amount of time with day care providers. How the staff contact was initiated and nurtured did not seem to matter, whether through licensing, monitoring, training or technical assistance activities. What did seem to matter was that a rapport and dialogue between the administering agency and the provider be established. And, it also seemed important that this relationship be focused on clarifying problems and improving services. In contrast, it was found that in States judged to be in low compliance with the FIDCR, administering agency staff time was primarily focused on the environmental, health and safety aspects of licensing.

States which invested the necessary staff time and effort to develop monitoring materials which articulated policies and practices also appeared to be more successful in complying with the FIDCR than those States which did not focus administrative activities to provide this structure. The language of the FIDCR is frequently ambiguous and State licensing and monitoring personnel appeared to need clear directives establishing what they were to measure and how they would evaluate program performance.

Finally, the day care programs of States in high compliance appeared to be operated in a regulatory climate supportive of the goals and purposes of the FIDCR.

Because FIDCR activities usually piggyback onto the regulatory or purchase of service procedures of State standards, it is also difficult to separate out what additional administrative costs the enforcement of the FIDCR imposes on a State. The APWA and the REAP studies indicate however, that administrative activities that involve provider contact have commensurate costs--training and licensing of family day care homes having the highest potential cost implications. In five States estimated to be in high compliance with the FIDCR, training costs averaged about $237 per trainee (APWA, 1977).

The relatively high turnover of family day care homes within short periods of time, and the low ratios of children to administering staff, make this a more expensive mode of day care to administer than center based day care (see Table 4.6). It takes more staff per child to establish and maintain contact and coordinate activities for family day care than it does for center-based day care.

Licensing and monitoring activities directed toward providing technical assistance require a staff with greater skill when provider contact is encouraged than when it is not. States which want to provide more technical assistance through provider contact face the alternative of hiring new staff with the professional backgrounds necessary to perform these tasks or training the existing staff in these skills. Both options are potentially expensive. Hiring a more professionally experienced staff increases salary expenses, while providing inservice training can require a significant investment of personnel and financial resources.

To the extent that States do not have the necessary staff available to ensure day care provider contact and coordination of activities, they will have to hire additional personnel. If the information from the FIDCR Title XX Impact Study is at all representative of the status of State administrative personnel needs, States do have sufficient staff to ensure quality contact time with day care providers. However, to accomplish this task existing staff time will need to be reallocated. Reallocation of staff time will have accompanying costs as existing tasks will have to be deferred or transferred to other staff.

TABLE 4.6 Average Annual Costs Per/Child of Licensing and Monitoring in Center and Family Day Care in Selected States

	Family Day Care	Center Care
Licensing	$24.00/child	$5.40/child
Monitoring	$23.00/child	$10.50/child

Source: APWA, 1977

Finally, the effect of the FIDCR on State day care policies is not entirely clear. Some States, such as Alaska, have decided not to fund day care out of Title XX monies and have instead purchased care with State funds or through the AFDC program. This probably is related to the State's concern about having to comply with the FIDCR, although other factors (such as wage rates, pressures from unions) also contribute to these decisions. 4/

It is not possible to determine if the responsibility for administering and enforcing the FIDCR places an excessive burden on State capabilities or resources. Except for the data on program compliance with the FIDCR child-staff ratios, there is no reliable information on how effective States have been in implementing the other FIDCR components. The information on FIDCR related consequences to State administrative policies and costs is primarily descriptive and has been compiled only for a few States. Further, HEW has not provided the guidance or enforcement to support State efforts to implement the FIDCR. For all these reasons, objective evidence is not available to decide if States should continue to assume the responsibility for administering and enforcing the FIDCR. For subjective reasons, this current practice makes sense. At the hearings held to review a draft of the "Appropriateness Report", there was little or no support for having Federal monitors take over current State roles. What appears to be clear is that there is a recognized need to have HEW assume a more directed regulatory role, supportive of State efforts to implement Federal day care requirements.

4/ Even if States elect not to fund day care programs out of Federal Title XX monies, there would be no saving of Federal monies as long as the State continued to spend its full Title XX allotment.

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GLOSSARY OF TERMS [1]

ACYF

Administration for Children, Youth, and Families, an agency within the Office of Human Development Services, HEW.

ADMINISTERING AGENCY

The agency that receives Federal funds under Titles XX (Social Services), IV-A, IV-B (Child Welfare Services), and IV-A (WIN) for day care services and that has ultimate responsibility for the conduct of the day care services program. The administering agency may be the State Title XX public social service agency or the Child Welfare Services (Title IV-B) agency, if separate from the Title XX agency. The term "administering agency" may also refer, in some States, to the local public agencies authorized by law to administer the social services programs.

AFDC WORK EXPENSE DISREGARD

The deduction of certain work expenses, such as the cost of day care services, in the computation of a person's income for the purpose of determining AFDC benefits.

AGE OF ENTRY

Age at which a child enters a day care program.

AGE MIX

The age composition of a group of children in a day care setting.

AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM

A Federal financial assistance program, authorized under Title IV-A of the Social Security Act. The AFDC program provides money to

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[1] This Glossary defines terms as they have been used in day care research or as they are commonly understood by the Department of Health Education and Welfare.

States, which provide services and distribute cash assistance to eligible needy families with dependent children, to cover costs of food, shelter, clothing, and other items. When the income of AFDC recipients is calculated in order to determine benefits, the cost of certain work-related expenses, including day care, may be deducted. See AFDC Work Expense Disregard.

APS

Administration for Public Services, an agency within the Office of Human Development Services, HEW.

CAREGIVER

A person who provides direct care to children in a day care setting. Caregivers include teachers and aides in day care center classrooms; family day care providers and aides; and providers of in-home day care.

CASP

See Comprehensive Annual Services Program Plan.

CDA

See Child Development Associate.

CERTIFICATION

State endorsement or approval of a day care facility or provider for compliance with Federal and/or State day care regulations.

CETA

See Comprehensive Employment and Training Act.

CFR

See Code of Federal Regulations.

CHILD CARE FOOD PROGRAM

A Federal program, administered by the Department of Agriculture, to assist States, through grants and other means, to initiate, maintain, or expand nonprofit food service programs for children in facilities providing childcare, including day care centers, family day care homes, and Head Start centers.

CHILD DEVELOPMENT ASSOCIATE (CDA)

A person who has earned the early childhood education/child development credential awarded by the Child Development Associate Consortium. The CDA credential is a professional award that certifies that a "person is able to meet the specific needs of a group of children aged 3 to 5 in a child development setting by nurturing the children's physical, social, emotional, and intellectual growth, by establishing and maintaining a proper childcare environment, and by promoting good relations between parents and the child development center."

CHILD-STAFF RATIO

In a day care setting, the ratio of the number of children in a group to the number of caregivers assigned to the group. A high child-staff ratio (for example, 20:1) means that there are many children per caregiver in a group. A low child-staff ratio (5:1) means that there are relatively few children per caregiver in a group.

CHILD WELFARE SERVICES (CWS)

Public social services that supplement or substitute for parental care and supervision in order to prevent or remedy harm to children and to protect and promote the welfare of children. Child Welfare Services are authorized under Title IV-B of the Social Security Act. Among the services States provide under the program are foster care, protective services, health-related services, family counseling, homemaker services, child day care services, and emergency shelter services. Any child is eligible for services regardless of the social or economic status of the child or family.

CODE OF FEDERAL REGULATIONS (CFR)

Codification of the current general and permanent regulations of the various Federal agencies. The Federal Interagency Day Care Requirements are contained in part 71, subtitle A, of Title 45 (Public Welfare) of the Code of Federal Regulations.

COMPLIANCE

Conformity to regulations; behaving or operating in accordance with regulations.

Glossary

COMPONENT, DAY CARE

A major aspect or element of a day care services program; for example, a parent involvement component would comprise all the activities through which parents may be involved in the provision of day care.

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN (CASP)

The State's annual services plan required under Section 2004 of the Social Security Act.

COMPREHENSIVE EDUCATION AND TRAINING ACT OF 1973 (CETA)

Federal legislation authorizing funds to State and local governments to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities. Day care services are offered as a support service to participants in CETA programs. CETA workers may be employed by nonprofit day care providers and may participate in on-the-job training at for-profit facilities.

COMPREHENSIVENESS

The breadth of coverage of day care standards, that is, the extent to which a set of standards contains different components of care.

CONTINUITY OF CARE

The stability of the caregiving situation and the consistency and balance of care between the home and the day care facility.

CORE COMPONENT

An element of day care services that is essential to the well-being of the child while in the day care setting. A noncore component is an element of day care services that affects the total well-being of the child, but is not essential to his or her immediate well-being in the day care setting.

CURRICULUM

A planned set of activities and materials carried out with a group of children in a day care setting, designed to achieve certain goals for children in care, such as age-appropriate social, emotional, physical, and cognitive growth.

Glossary

CWS

See Child Welfare Services.

DAY CARE

Care provided to a child inside or outside the child's home, by a person or persons other than a member of the child's immediate family, during some portion of a 24-hour day. Day care is usually associated with children whose parents work or carry out other productive tasks. However, components of day care, particularly for children 3 to 5 years of age, may have characteristics identical to preschool or nursery school programs.

DAY CARE, ALL-DAY OR FULL-DAY

Day care provided for more than 6 hours in 1 day.

DAY CARE, FULL-TIME

Care provided for 30 hours or more per week in periods of less than 24 hours per day. The HEW/APS FIDCR Monitoring Guide defines full-time care as care provided for 32 hours or more per week in periods of less than 24 hours per day.

DAY CARE, PART-TIME

Care provided for less than 30 hours per week in periods of less than 24 hours per day. The HEW/APS FIDCR Monitoring Guide defines part-time care as care provided for less than 32 hours per week in periods of less than 24 hours per day.

DAY CARE AIDE

A person who assists a lead or primary caregiver in the direct care of children in a day care setting.

DAY CARE CENTER

A facility in which care is provided part of a 24-hour day for a group of 13 or more children. The HEW/APS FIDCR Monitoring Guide defines a day care center as a licensed facility in which care is provided part of the day for a group of 12 or more children.

DAY CARE FACILITY

The place where day care is provided to children (e.g., a family day care home, a group day care home, or a day care center).

Glossary

DAY CARE PROVIDER

An individual, organization, or corporation that provides day care services for children.

DEVELOPMENTAL SERVICES

A component of day care services that comprises the program activities, materials, and staff qualifications necessary to support the cognitive, social, emotional, and physical development of children in care. This component is not now regulated by the Federal Interagency Day Care Requirements.

EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT PROGRAM (EPSDT)

An element of the Medicaid program (authorized under Title XIX of the Social Security Act) that provides early screening and periodic diagnostic and testing services to children of AFDC recipients and other needy children for the purpose of detecting potentially crippling or disabling physical or mental health problems.

ELIGIBILITY FOR TITLE XX SOCIAL SERVICES

Persons eligible for social services, such as day care, provided under Title XX of the Social Security Act are: recipients of AFDC or Supplemental Security Income (SSI) programs, and, at State option, other persons who meet State and Federal income limitations. States may set income eligibility limits that do not exceed 115 percent of the State median income for a family of four, adjusted for family size. Any individual is eligible to receive the following services provided under Title XX without regard to income: family planning, information and referral, and any service directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.

ENFORCEMENT MECHANISM

The process by which Federal, State, or local governments take action to compel observance of regulations.

FAMILY DAY CARE

Day care provided to a child in the home of another family or individual.

FAMILY DAY CARE HOME

A private family home in which children receive day care during some part of a 24-hour day. The HEW/APS FIDCR Monitoring Guide defines a family day care home as a licensed or approved private family home in which children receive care, protection, and guidance during a part of the 24-hour day. A family day care home may serve no more than a total of six children (ages 3 through 14)—no more than five when the age range is infancy through 6—including the family day care mother's own children. Public Law 94-401 (1976) provides that States, in computing the number of children in a family day care home, need count only the children of the operator of the home who are under age 6.

FEDERAL INTERAGENCY DAY CARE REQUIREMENTS (FIDCR)

Federal regulations, issued in September 1968, that specify requirements that must be met in the provision of day care funded under certain Federal programs. In 1968, the FIDCR applied to day care under: Title IV-A and IV-B of the Social Security Act; Title I, Title II, Title II-B, and Title V of the Economic Opportunity Act; the Manpower Development and Training Act; and, at State option, under Title I of the Elementary and Secondary Education Act. (Many of these programs no longer exist.)

The Social Services Amendments of 1974 (Public Law 93-647), which established Title XX of the Social Security Act, incorporated a modified form of the FIDCR into Title XX as a purchasing requirement for day care funded under Title XX, Title IV-A (WIN), and Title IV-B programs.

The FIDCR are organized according to nine categories or components of day care services, as follows: Day Care Facilities (including types of facilities; grouping of children and child-staff ratios; and licensing or approval of facilities); Environmental Standards (location of day care facilities; safety and sanitation; suitability of facilities); Educational Services (educational opportunities, activities, and materials, supervision by trained or experienced staff member); Social Services (coordinated provision of social services, counseling and guidance to parents, assessment of child's adjustment in day care program); Health and Nutrition Services; Training of Staff; Parent Involvement; Administration and Coordination; and Evaluation.

FEE SCHEDULE

The rates charged by a day care provider to purchasers in full or partial compensation for services rendered. A fee schedule that varies—based on family income, family size, or age of the child in care—is used by many providers. A sliding fee schedule may be required of providers who serve children supported under Federal social services programs. Title XX requires that States impose fees reasonably related to income for services furnished to persons with incomes over 80 percent of the State's median income. States may impose fees for recipients and persons with incomes below the 80-percent level. In cases in which sliding fees are used, the social services agency in effect shares part of the cost of care with the child's family.

FEDERAL FINANCIAL PARTICIPATION (FFP)

A designation indicating that some or all of a facility's funds are Federal. Non-FFP care is purchased entirely with private funds. Most FFP facilities are required to meet the FIDCR; if they fail to do so, the Government is obligated to withhold reimbursement to the State for care purchased during the period when they were not in compliance.

FFP DAY CARE FACILITY

In this report, the term FFP facilities refers to facilities that receive funding under Title XX, IV-A (Social Services), IV-A (WIN) or IV-B programs.

FIDCR

See Federal Interagency Day Care Requirements.

FOLLOW-THROUGH

A Federal program, administered by the Office of Education of the Department of Health, Education, and Welfare, that offers specific programs of instruction, health, nutrition, and related services that aid in the continued development of elementary school children from low-income families who participated in Head Start and other qualified preschool programs.

FULL-TIME EQUIVALENT (FTE)

A term used in personnel management to denote the amount of time, effort, or cost expended in one full-time position.

GAO

General Accounting Office.

GROUP DAY CARE HOME

An extended or modified, licensed or approved family residence in which family-like care is provided, usually to school-age children, and usually for up to 12 children.

GROUP SIZE

The number of children in a day care center classroom or cluster, or in a family day care home or group day care home. Maximum allowable group sizes for different forms of care are specified by State licensing standards and the Federal Interagency Day Care Requirements.

HEAD START

A Federal program that provides comprehensive health, education, nutrition, social, and other services primarily to economically disadvantaged preschool children and their families. The program emphasizes the importance of local community control and parent involvement in the activities of their preschool children.

INCOME TAX CREDIT FOR CHILD CARE EXPENSES

A credit against tax due for 20 percent of qualified child care expenses, up to a maximum of $2,000 in expenses for one dependent and $4,000 for two or more. The maximum credit is $400 for one dependent and $800 for two or more.

INFANTS

Children under 18 months of age.

INFORMATION AND REFERRAL SERVICES, DAY CARE

A resource that provides information to individuals about day care services available in the community. They usually provide the names, addresses, and phone numbers of several day care centers or family day care homes that would be convenient to the home or place of work of the family making the inquiry (Travis and Perreault, 1977).

IN-HOME DAY CARE

Care provided for a portion of the day in the child's home by a nonrelative or by a relative who is not a member of the child's immediate family.

IN-HOME DAY CARE

Care provided for a portion of the day in the child's home by a nonrelative or by a relative who is not a member of the child's immediate family.

INSERVICE TRAINING

Job-related learning activities for caregivers, including advice on and criticism of daily performance, on-the-job training, and formal or informal academic experience.

LICENSING

The granting by a State of a license, or permission to operate a day care facility, to a provider who has shown evidence of compliance with the State's licensing code, licensing standards, or minimum requirements for the license.

LICENSING CODE

Specified standards in State law that must be met before a license or permission to operate is granted by the State.

LICENSING STANDARDS

State-established standards that must be met before official approval to operate is granted or before a license to operate is issued.

MEDIAN FAMILY INCOME

The income level in a State that represents the level below which half of the incomes of households fall. The median income for a family of four (adjusted for family size) in each State and the District of Columbia is used to determine eligibility of individuals for Title XX services on the basis of income. See Eligibility for Title XX Social Services.

MINIMUM WAGE

The lowest wage per hour permitted by Federal law in industries governed by the Fair Labor Standards Act. The current minimum wage, $2.65 per hour, applies to day care center workers and in-home caregivers. It also applies to family day care homes when the caregiver is regarded as an employee.

Glossary

MONITORING

The observance and overseeing of day care programs by a government agency responsible for enforcing applicable regulations.

MONITORING GUIDE, HEW/APS FIDCR

Publication of the Administration for Public Services that provides guidelines for use by State agencies in monitoring out-of-home child care facilities for the purpose of determining whether or not the facilities meet Federal and State standards.

MORATORIA ON FIDCR CHILD-STAFF RATIOS

Congressional amendments to Title XX of the Social Security Act that suspended or waived the FIDCR child-staff ratios under certain conditions:

- Public Law 94-120, sec. 3 (Oct. 1975) suspended FIDCR Title XX child-staff ratios for children between the ages of 6 weeks and 6 years in day care centers and group day care homes if the staffing standards actually being applied (a) complied with applicable State law, (b) were no lower than corresponding standards imposed by State law on Sept. 15, 1975, and (c) were no lower than corresponding standards actually being applied in the centers or homes on Sept. 15, 1975. The suspension authorized by this law was in effect from October 1975 to February 1976.
- Public Law 94-401, sec. 2 (Sept. 1976) extended the suspension of staffing standards allowed by Public Law 94-120 to Sept. 30, 1977.
- Public Law 95-171, sec. 1(d) (Nov. 1977) extended suspension of the staffing standards to Sept. 30, 1978.

NDCS

National Day Care Study.

NONCORE COMPONENT

See Core Component.

NONPROFIT DAY CARE

Day care provided by a public or private agency or organization not organized for profit.

NPRM

Notice of Proposed Rulemaking.

POVERTY LEVEL

The low-income level based on the Social Security Administration's poverty thresholds, adjusted annually in accordance with changes in the Consumer Price Index. Poverty levels reported by the Bureau of the Census, U.S. Department of Commerce, for 1976 and estimated figures for 1977 are:

	1976	1977 (estimated)
One person under age 65	$2,959	$3,150
Two persons, head of household under age 65	3,826	4,070
Three persons	4,540	4,830
Four persons	5,815	6,190

PPVT

Peabody Picture Vocabulary Test, a measure of a child's vocabulary and verbal skills.

PRESCHOOLERS

Children aged 3 years or older and under 6 years of age.

PRESERVICE TRAINING

Training and education acquired by a caregiver before entering the day care field.

PRIVATE-PAY DAY CARE

Day care supported by parent fees.

PROFESSIONALISM

In the National Day Care Study, professionalism was defined as the total years and type of formal education and child-related training and experience of a caregiver. It is often thought of in a broader context related to the performance capability of a caregiver as measured by professional standards (e.g., award of the Child Development Associate credential).

PROGRAM SIZE

The number of children enrolled in a day care facility.

PROPRIETARY DAY CARE

Day care provided on a for-profit basis by an individual or business concern.

PSI

Preschool Inventory, a test instrument of certain cognitive skills and knowledge of preschool children. The PSI is used to measure some aspects of school readiness.

PURCHASE-OF-SERVICE REQUIREMENTS

Requirements that specify the conditions under which the administering agency agrees to purchase services on behalf of Title XX, Title IV-A (Social Services to Guam, Puerto Rico, and the Virgin Islands), Title IV-A(WIN), or Title IV-B programs. The FIDCR and related administrative regulations in parts 200, 226, and 228 of Title 45 of the Code of Federal Regulations are the purchase-of-service requirements for day care services funded under the Social Security Act.

REGISTRATION

A process whereby a provider or potential provider makes known to the appropriate State or local agency his or her intent to engage in family day care. Registration may take several forms and may include the provider's certification of meeting appropriate State standards. Generally, HEW does not consider registration to be a form of licensure. Registration as a form of licensure is being used on experimented with in several States. The process differs somewhat from State to State. The term registration is sometimes used to refer to a simple listing of existing family day care homes compiled by an information and referral agency (Travis and Perreault, 1977).

REGULATIONS

Statement of a government agency of general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of an agency. Federal regulations have the force of law and may include sanctions for noncompliance. The Federal Interagency Day Care Requirements are Federal regulations (codified in part 71 of Title 45 of the Code of Federal Regulations). They wese developed to implement a congressional mandate issued in sec. 107(a) of Public Law 90-222 that the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity "coordinate programs under their jurisdictions which provide day care, with a view to establishing, insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels."

Regulations implementing Title XX of the Social Security Act are contained in part 228 of Title 45 of the Code of Federal Regulations. The day care requirements imposed by sec. 2002(a)(9)(A) of Title XX appear in part 228.42 and incorporate by reference the 1968 FIDCR, with some modifications, into the Title XX regulations.

REIMBURSEMENT RATES

The amounts by which a State will reimburse a day care provider for day care services purchased under a Federal program. Reimbursement rates are set by the States.

SANCTIONS

Actions taken by a Government agency to enforce regulations or to punish violation of them. Sanctions include (1) prohibition, requirement, limitation, or other condition affecting the freedom of a person; (2) withholding of funds; (3) imposition of a penalty or fine; and (4) charge of reimbursement, restitution, or compensation.

SCHOOL-AGE CHILDREN

Children aged 6 years or more and under 14.

SCHOOL-AGE-DAY CARE

Care provided to children of school age before or after school hours.

SMSA

Standard Metropolitan Statistical Area. This is a Federal Government designation of a geographical area that is an integrated economic and social unit with a large population.

SOCIAL SERVICES PROGRAM

A Federal program, authorized by Title XX of the Social Security Act, to enable States to provide social services to public assistance recipients and other low-income persons. The services must be directed to one of five legislative goals: (1) economic self-support; (2) personal self-sufficiency; (3) protection of children and handicapped adults from abuse, neglect, and exploitation; (4) prevention and reduction of inappropriate institutionalization; and (5) arrangement for appropriate institutionalization and services when in the best interest of the individual. Services offered by most States include day care, foster care, homemaker services, health-related services, and services to the mentally retarded and to drug and alcohol abusers. Many other services are also offered.

SSI

See Supplemental Security Income.

STAFF-CHILD RATIO

See Child-Staff Ratio.

STAFF TURNOVER RATE

The percentage of caregivers terminating employment at a facility over a given period of time. For example, in a day care center employing a total of five caregivers during a given year, the annual staff turnover rate for that year would be 40 percent if two caregivers terminated employment during the year.

STANDARDS

The word "standards" has many definitions in this report; the term is used in several of its generally accepted meanings: (1) a "rule or principle used as a basis for judgment"; (2) "an average or normal requirement, quality, quantity, level, grade, etc."; or (3) "a model, goal, or example to be followed" (Random House Dictionary, 1966, cited in Morgan, 1977).

STANDARDS (continued)

The Federal Interagency Day Care Requirements are Federal funding standards, containing specific requirements to be met as a condition of Federal funding or purchase of day care services. State licensing codes contain day care standards that specify the conditions that must be met before a license or permission to operate is granted. Funding standards and licensing standards can be enforced by the responsible Government agency through a variety of sanctions: withholding or withdrawal of Federal money, in the case of the FIDCR; and denial, suspension, or revocation of a license, in the case of State licensing standards. The Child Development Associate Consortium has established professional standards of competent child care, by which applicants for the CDA credential are judged.

Goal standards embody ideals or present models of day care program performance. Goal standards are not legal requirements and are not designed to be enforced.

STATE PLAN

A permanent administrative plan, in which the State designates the administering agency for Title XX services and pledges itself to meet the compliance requirements of section 2003 of the Social Security Act.

SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM

Federal program that provides supplemental income to indigent persons aged 65 and over or who are blind or disabled. States are required to provide at least three services for SSI recipients as part of their Title XX program.

TITLE IV-A, SOCIAL SECURITY ACT

See Aid to Families with Dependent Children and AFDC Work Expense Disregard.

TITLE IV-B, SOCIAL SECURITY ACT

See Child Welfare Services.

TITLE XX, SOCIAL SECURITY ACT

See Social Services Program.

TODDLERS

Children aged 18 months or more and under 36 months.

WAIVER

Suspension of the application of the Federal Interagency Day Care Requirements by HEW, as allowed by the FIDCR under certain conditions.

This term may also refer to the suspension of the FIDCR allowed by Public Law 94-401 (1976), which provides that States may waive staffing standards otherwise applicable to day care centers or group day care homes in which not more than 20 percent of the children in care (or, in a center, not more than five children in the center, whichever is less) are children whose care was being paid for under Title XX, if the facilities met applicable State staffing standards.

WISC

Weschler Intelligence Scale for Children. Test instrument, developed from the Weschler-Bellevue scale, that measures the intelligence of children with regard to performance under given conditions, not "native ability."

WORK INCENTIVE PROGRAM (WIN)

A Federal program designed to help recipients of AFDC become self-supporting by providing training, job placement, and employment opportunities, and related services. The WIN program is authorized under Title IV-C of the Social Security Act. Supportive services for WIN participants, authorized under Title IV-A of the Social Security Act, include day care services.

APPENDIX A

EXECUTIVE SUMMARY OF

"The Appropriateness of the Federal Interagency Day Care Requirements (FIDCR): Report of Findings and Recommendations"

EXECUTIVE SUMMARY

Day care has become an increasingly important part of family life in the United States. Today, 11 million children under the age of 14 spend a substantial part of their week in childcare arrangements. How they spend their time in these formative years is a legitimate concern of the public and of public policy.

For 2.5 million infants and toddlers, enrollment in day care marks their first separation from their parents during years that are critical to their total development. For 3.7 million preschoolers, day care has the potential to expose them to beneficial experiences that will better prepare them for their first years in school. For slightly more than 4.9 million school-age children 13 and under, their experiences in day care before and after school may be intertwined with school activities. Children aged 10 to 13 are less likely than those in other age groups to be in day care because many parents consider them to be old enough to look after themselves when not in school.

The Federal Government—mostly the Department of Health, Education, and Welfare (HEW)—subsidized approximately $2.5 billion of childcare arrangements in 1976. In 1975, parents spent $6.3 billion for privately purchased day care.

As a Department concerned with the well-being of all children, HEW has a fundamental responsibility to assure that the children and parents assisted by its programs are well served and that day care funds entrusted to the Department are well spent. HEW has a special responsibility for young children who cannot protect their own interests.

Most of the day care arrangements financially assisted by HEW funds are regulated by the Federal Interagency Day Care Requirements (FIDCR), which are published Federal regulations authorized by Congress. The FIDCR were promulgated in 1968; in 1975, the FIDCR were modified and incorporated into Title XX of the Social Security Act.

In 1975, Congress also mandated the Secretary of HEW to evaluate the appropriateness of the day care requirement imposed by Title XX. This report responds to that mandate. It concludes that:

- Federal regulation of federally supported day care is appropriate.
- The FIDCR can be rewritten, based on 10 years of experience, to improve their ability to protect and enhance the well-being of children.

This report is the result of 3 years of extensive study by HEW of research in the field of day care; of 21 state-of-the-art papers specially commissioned for this project; and of comments from practitioners, parents, administrators, and other parties interested in day care.

As this report was being completed, the Secretary of HEW announced that the Department was beginning the process of revising the FIDCR. Details of this process are described in Chapter 5.

CHAPTER 1
A PERSPECTIVE ON THE FIDCR AND DAY CARE

The largest single Federal day care program is carried out by HEW under Title XX of the Social Security Act. In 1976, about one-third of federally supported day care was provided under Title XX, underwriting care for more than 600,000 children.

The planned Title XX day care expenditures remained relatively constant in fiscal years 1976 ($759 million), 1977 ($742 million), and 1978 ($772 million), even though Congress enacted supplemental appropriations of $200 million above the ceiling in both 1977 and 1978 to help States meet the requirements imposed by the FIDCR. Many States, however, decided not to increase day care expenditures.

THE VARIETIES OF DAY CARE

There are three types of day care: in-home (provided in the child's own home); family (provided in the caregiver's home); and center (provided in a center serving more than 12 children).

Providers of each type vary widely in background, experience, and expertise. They range from grandmothers and other close relatives to homemakers with children of their own to small business entrepreneurs to professionals with graduate degrees in child development. Their duties are the same, however: to protect the child from physical harm, to feed the child and minister to the child's health needs, to set disciplinary limits for the child, and to nurture the child in his or her development.

This study concludes that appropriateness must be evaluated in terms of what the FIDCR are intended to accomplish. This study concludes that, although the principal purpose of day care is to help parents to work and to achieve self-support, the principal purpose of the FIDCR is to facilitate the appropriate social, emotional, physical, and cognitive growth of children in Title XX day care.

Chapter 2 of this report examines research, expert opinion, and consensus of practical experience on the effects of the FIDCR components on reducing risk of harm and on promoting the well-being of children in care. Chapter 3 presents estimates of what certain FIDCR provisions cost. Chapter 4 analyzes the efforts by the Federal and State governments to implement the FIDCR. Drawing on the data presented in the earlier chapters, Chapter 5 discusses the kinds of policy choices confronting the Department and presents preliminary findings and conclusions, recommendations, and HEW's plans for developing new FIDCR.

CHAPTER 2
IMPACT OF THE FIDCR ON CHILDREN IN DAY CARE

The FIDCR cannot be tested with laboratory precision because they lack clarity and specificity, and are not uniformly in operation in the field. But their appropriateness can be assessed, based on experience and available research. The basic criterion for assessment is the effect of the regulations on the well-being of the children in care. Chapter 2 discusses the FIDCR components and assesses them in terms of that criterion.

GROUPING OF CHILDREN

Child-staff ratio and group size are the regulatable aspects of day care that are most directly related to the amount and nature of personal attention that caregivers can give children. Evidence shows that small groups of children and caregivers best promote competent child development. Group size should vary according to the ages of the children in care and whether there are children, such as the handicapped, with special needs. Small groups are especially important for children under age 3.

Low child-staff ratios and small group sizes may in themselves guarantee very little about the quality of care children receive, because they interact with other components of day care—such as caregiver competence. Any revision to the FIDCR should take this interrelatedness into account.

Important natural variation in group size and child-staff ratios occurs in a center or family day care home during the day and throughout the year. This variation must be accommodated by any administrative regulations.

CAREGIVER QUALIFICATIONS

Limited research data exist on the differential effects of various types of education, credentials, experience, and inservice training on caregiver behavior. Research data and expert opinion reveal, however, that (1) specific caregiving skills are needed to support the well-being of the child, (2) training can be used to promote these skills, and (3) training is essential to refine or improve current caregiver performance in all modes of care.

EDUCATIONAL OR DEVELOPMENTAL SERVICES

Educational (or developmental) services should lay the groundwork for continued cognitive, social, emotional, and physical development. This can best be achieved by clearly defined program objectives, quality caregiving, and age-appropriate materials. This is important for all children, regardless of age.

Data indicate a disproportionate prevalence of developmental risk among children of low-income families. Over time, that risk impairs their ability to thrive. The optional nature of, as well as the broader developmental goals intended by, this component must be clarified and refined.

ENVIRONMENTAL STANDARDS

There is no assurance that State and local safety and sanitation codes adequately protect the well-being of the child in the day care environment. Many codes were written for facilities other than day care, and these codes do not cover the safety of play equipment.

The type of space is not the only important aspect of environment. Also important are play materials and privacy.

HEALTH SERVICES

A considerable portion of children in Title XX day care are at risk with regard to their health. The present standards address all the areas of concern regarding the child's health status both within and outside the day care setting, but there are problems associated with their implementation. Day care providers can more reasonably be expected to be responsible for quality control and preventive functions for health problems than to deliver health care services.

NUTRITIONAL SERVICES

It is important to provide children with nutritious meals and snacks in day care to help insure that their overall diets are nutritionally sound. As many as a third of the children currently eligible for federally funded day care are likely to be at risk in terms of inadequate caloric intake and vitamin deficiencies. Many family day care providers lack a basic understanding of good nutrition and resources to provide adequate nutritional services to the children they serve.

PARENT INVOLVEMENT

Underlying the Parent Involvement component is the belief that children in day care will benefit from the participation of their parents in the program. The data available on parent involvement in day care generally indicate relatively low levels of parent participation in such activities as policy planning and budget review. Educational workshops that provide childrearing information appear to be popular among parents. Several research and demonstration projects show that when parents receive rigorous training in caregiving skills and tutoring techniques, their children show significant social, emotional, and cognitive developmental gains. Parents become more sensitive to their children's needs and interact with their children in cognitively appropriate ways.

SOCIAL SERVICES

This FIDCR component impacts only indirectly on the child in care. It is nonetheless important because many childcare experts believe no short-term intervention program can succeed in supporting the competent development of a child whose family is overwhelmed by its socioeconomic plight or other problems. Most parents want referral services that will help them select appropriate day care for their child. This need is largely unmet across the country. As with the Health Services component, the emphasis of this component should be on information and referral to other social services.

ASPECTS OF DAY CARE NOT ADDRESSED BY THE FIDCR

Chapter 2 also examines four aspects of day care not currently regulated by the FIDCR.

Continuity of Care

A great deal of research describes the negative effects on children of all ages—and especially on young children—of caregiver instability and inconsistency in caregiving environments. Continuity of care apparently is not enhanced by current regulatory/administrative practices. Although evidence suggests that this variable could not be easily regulated, the impact of Title XX policies—including the FIDCR—on continuity of care should be considered in developing new FIDCR.

Age of Entry into Day Care

There are no data that specify the earliest age at which a child can be separated from the primary caregiver (usually the mother) for an extended period each day without suffering negative developmental consequences. There is insufficient evidence to suggest that this component should be regulated.

Hours in Care

Parents who seek childcare arrangements because of employment probably think of the hours of service more in terms of their own needs than of the impact on their children. The impact of hours in care on child well-being has not been adequately assessed to suggest if this variable should or can be regulated.

Program Size

Data on the relationship between program size and quality of care are meager, but the results suggest that the bigger the program, the bigger the problems. Some of these problems, which include negative interaction patterns between teachers and children and high levels of staff turnover, are indicators of poor quality care. Many problems of size can be overcome by proper management. At present, however, the evidence is insufficient to justify regulating this variable.

CHAPTER 3
COST IMPLICATIONS OF THE FIDCR

Three major questions concerning the cost of the FIDCR are:

- Does meeting the FIDCR raise costs significantly above those of private-pay care?

- What is the cost of bringing all Federal financial participation (FFP) day care facilities into compliance with the FIDCR? (FFP facilities are those receiving Federal funds.)
- How much do the comprehensive services now provided in FFP care add to its cost?

The chapter addresses FIDCR related costs for the three major types of childcare: center, family, and in-home. Centers receive the most emphasis because they are more likely than other facilities to be federally supported and because more is known about center care than the other two.

FIDCR COSTS FOR DAY CARE CENTERS

The FIDCR are minimum requirements that States must enforce to receive Federal funds for childcare. The additional cost of care that results from meeting those requirements might be measured in several ways. This report uses cost estimates of the minimum compliance effort, based on a reasonable reading of the Monitoring Guide of the Administration for Public Services. States and providers may choose to go beyond the minimum requirements, of course.

Of all nine FIDCR requirements, only that regulating child-staff ratios permits a specific numerical estimate of the additional expenses of meeting that requirement. However, technical and definitional problems make even these estimates subject to significant differences in interpretation.

Using the National Day Care Study - Supply Study data and a relatively lenient method of measuring compliance, it would appear that meeting the ratio requirement would increase the average cost of care per child an estimated $19 a month or $227 a year compared to non-FFP centers. This means that FFP children in centers meeting the FIDCR will receive care that is significantly more expensive than that purchased by parents in centers serving only private pay children. Moreover, it is likely that the majority of the non-FFP centers could not meet the cost of the FIDCR child-staff ratio requirement and continue to serve private-pay children unless some subsidy were available for all the children in their care.

It appears that meeting the non-staffing requirements of FIDCR, using the minimum compliance interpretation, adds little to the resources generally offered by private day care or already mandated by most State licensing standards.

A 1976-77 survey estimated that 5,500 more full-time caregivers were needed nationwide to bring into compliance the FFP centers not meeting FIDCR child-staff ratio requirements. Estimates of the total cost to hire those caregivers range from $33 million to $44 million a year, depending on the wages and fringe benefits offered.

Many FFP centers complying with the FIDCR have staff beyond what the regulations require. The 1976-77 survey estimated 12,400 such staff. To the extent that any of the 12,400 staff now employed in excess of the FIDCR requirement could be reduced through attrition or shifted to noncomplying centers through transfer, the net cost of meeting the staff ratio requirements would be reduced. Transfers would be most practical in centers operated by school districts or other governmental units (about 10 percent of all centers). Each thousand extra full-time equivalent staff reassigned or eliminated results in an annual reduction of $6 million to $8 million in salary costs.

Finally, nonprofit FFP centers often provide comprehensive services (e.g., meals, transportation, and social services) that appear to go beyond those required by the minimum interpretation of the FIDCR and beyond the services offered by for-profit FFP providers. These extra services, lower child-staff ratios, and higher wages push the total average monthly cost per child up to $190. That is $70 more than in nonprofit centers serving only private fee-paying parents, and considerably more than low- or middle-income families are likely to pay without Government financial assistance.

The higher cost of care in FFP centers is only one factor--but an important factor--in explaining why FFP children in day care tend to be separated from those in non-FFP care. At present, 40 percent of nonprofit, nonwaiverable centers serve only FFP children. Another 20 percent serve between 75 and 99 percent FFP children. It is likely that roughly 50 percent of FFP children in centers are in exclusively FFP facilities. Enforcing the FIDCR would probably result in some increase in the separation of the FFP and non-FFP children.

Of course, other factors lead to separation of FFP and non-FFP children. Examples of such factors are a center's location and State and local Title XX agency policies (e.g., New York City contracts with organizations to provide care exclusively for FFP children).

FIDCR COSTS FOR FAMILY DAY CARE

More than 5 million children are cared for in homes other than their own for at least 10 hours a week. In contrast to the center market, federally funded care is a small fraction of total family day care; only about 140,000 children received FFP family care for the fourth quarter of fiscal year 1976.

According to the FIDCR, FFP family facilities must be licensed. The individual licensing and Title XX policies of each State determine in large measure the impact of the FIDCR on family day care. For example, State policies determine whether relatives and friends can be certified to care for a Title XX child.

A section-by-section analysis of the FIDCR shows that none of the key family day care provisions (e.g., on the number of children in a home, training, licensing, monitoring, etc.) necessarily mean that reimbursement per FFP child would be substantially above the average fees charged for private-pay care. However, some State and local policies lead to substantial costs for training, support services, licensing, and monitoring.

IN-HOME CARE AND THE FIDCR

Nineteen percent of FFP children are served by in-home care. Little is known about its cost and characteristics. Until much more is known about wage rates and other aspects of in-home care, the additional costs (and benefits) of support services and training for these providers cannot be determined.

CHAPTER 4
ADMINISTRATION OF THE FIDCR

There are vertical and horizontal layers of regulation affecting day care programs. Vertically, the Federal, State, and local governments regulate day care. Horizontally, several Federal departments and agencies are involved and the States and localities also have several regulatory bureaucracies concerned with day care.

The administrative issues surrounding the FIDCR include:

- The relationship of the FIDCR to State licensing standards.
- The record of the Federal Government in developing, implementing, and enforcing the FIDCR.
- The ability of the States to administer the regulations.

STATE STANDARDS

State licensing standards prescribe minimum standards of performance that must be met by all State day care programs to operate legally.

It is difficult to compare State standards with the FIDCR because of the lack of research data on the State standards and because State standards often include local code requirements. States also differ in respect to what components of a day care program they regulate and in how they apply the standards.

State standards for center programs come the closest to regulating the same day care components as the FIDCR. Almost all States regulate child-staff ratios and the environmental, administrative, health and safety, and educational aspects of day care center programs. They are less unanimous in including requirements for staff qualifications and staff training and regulating group size. On the whole, States do not support establishing licensing requirements for social services, parent involvement, and program evaluation.

For family day care, both the FIDCR and State standards establish child-staff ratios, and facility, health, and safety requirements, but other areas of the FIDCR have little similarity with State standards. However, for five States, standards apply only to federally funded programs.

Only 20 States have any requirements for in-home care. FIDCR do not include standards for in-home care, relying on States to develop this type of regulation.

The fact that a State standard addresses requirements for the same components as the FIDCR does not speak to either the adequacy or specificity of that standard. States do not always regulate the same aspects of a particular component, and it is frequently difficult to determine if the elements being regulated are comparable in importance.

In conclusion, although State licensing standards have become more stringent in the past 10 years, the evidence indicates that these standards still do not insure a minimum level of program performance when judged by their comprehensiveness.

FEDERAL IMPLEMENTATION

The problems the Federal Government has experienced in designing and implementing a Federal day care regulatory policy are not unique. Many of the difficulties are inherent in any regulatory process. This report examines the FIDCR within the broader context of the state of the art of Federal regulation. The implementation of the FIDCR can be assessed in terms of six basic factors that influence the success or failure of Federal regulation in general.

Clarity of Goals of Regulation

There has been confusion since the drafting of the 1968 FIDCR as to what they are intended to accomplish. This confusion has existed despite the clear regulatory nature of the FIDCR. The regulatory goals are unclear with respect to the purpose of the FIDCR, the degree of compliance required, and whether the FIDCR are consistent with the goals of Title XX.

Clarity of Language

The language of the FIDCR and the lack of supporting materials have have made the application of critical FIDCR components a difficult task.

Public Involvement

The public affected by the FIDCR—day care consumers, providers, and State administrators—did not participate in the development of the FIDCR and is not informed that it has a role to play in the regulatory process.

Regulatory Climate

The Federal Government has not shown strong leadership in building and maintaining a consensus of support for the FIDCR.

Conflict of Loyalties

The process of implementing regulations can create conflicts of loyalty among those responsible for insuring that the goals of the regulations are carried out. In the case of the FIDCR, these conflicts can occur when State officials are responsible both for for providing a day care service and for terminating a major source of funds if day care programs do not meet the FIDCR. Conflicts can also occur when State licensing personnel play the dual role of consultant and program monitor. A related problem can occur when the regulator is also the purchaser of the day care service. A shortage of available day care can influence the judgments made about the adequacy of the existing resources.

Enforcement Policies

Generally, the Federal Government has shown little commitment to enforcing the FIDCR, or to imposing penalties for noncompliance.

STATE IMPLEMENTATION

The States have encountered difficulties in administering and enforcing the FIDCR because the regulations are vague and ambiguous in specifying what administrative tasks are required.

It is difficult to determine the success or failure of States in insuring program compliance because of the lack of reliable data. Available evidence indicates that, in States judged to be successful, agency staff spent a significant amount of time with the day care provider, agency staff developed technical assistance and guidance materials, and the program operated in a climate that supported the implementation of the regulations.

Objective evidence cannot determine whether States should continue to assume the responsibility for administering and enforcing the FIDCR. At the hearings held to review a draft of this report, there was no support for having Federal monitors take over current State roles. What appears to be clear is that there is a recognized need to have HEW support State efforts to implement Federal day care requirements.

CHAPTER 5
SUMMARY, RECOMMENDATIONS, AND NEXT STEPS

Congress has taken the view that day care is an important part of the lives of millions of children and, if federally supported, should be regulated. HEW agrees.

In developing the new FIDCR, HEW will face difficult choices in balancing competing values. The decisions made will reflect in part a view of the proper scope of Federal intervention and in part the strength of the evidence justifying the intervention.

THE NEED FOR MAKING DIFFICULT CHOICES

Perhaps the most fundamental aspect of a regulatory scheme is the inevitability of trade offs, the necessity of choosing between competing values or goals. Resolving these dilemmas requires sacrificing some of one objective to obtain some of another. Some of the choices that must be made concern the comprehensiveness of the FIDCR, their extensiveness, their specificity, and sanctions for noncompliance.

Comprehensiveness

The spectrum of possible coverage of the new FIDCR ranges from quite narrow, extending to only one or a few of the current components, to quite comprehensive, including all of those now covered plus others. Comprehensiveness also affects differently the various kinds of care that are regulated—center care, family care, or in-home care.

Extensiveness

For each aspect of care covered by the FIDCR, it is possible to prescribe standards that are more or less extensive or stringent. For example, the Environmental component of the FIDCR could prescribe standards designed to insure only the most minimal elements of physical safety or protection against abuse or emotional harm. At the other end of the spectrum, the requirement could attempt to insure an environment that will guarantee a wide variety of experiences designed to promote every aspect of a child's social, emotional, physical, and cognitive growth.

Specificity

No matter how comprehensive or narrow, requirements can be drafted with varying degrees of specificity. Many of the existing FIDCR are general.

Sanctions for Noncompliance

For any given requirement, it is possible to impose a broad range of sanctions. The possibility of graduated sanctions is already receiving serious HEW attention. Compliance systems could provide early warnings, consultation, training, or other assistance and time-phased graduated goals for providers who are conscientiously seeking compliance.

ALTERNATIVE MODELS FOR THE NEW FIDCR

The decisions that are made concerning the comprehensiveness, extensiveness and specificity of the new FIDCR and sanctions for noncompliance will not resolve all the important questions. Perhaps the most important issue that will remain is the extent to which the Federal Government will rely on States to prescribe the content of specific requirements and to enforce them.

In general, three models of Federal-State relationships in this area continue to surface in discussion of the FIDCR:

- The first model relies heavily upon States to define the specific content of requirements, to upgrade their standards, and to administer and enforce them.
- A second model would entail a more directive Federal role. Under this model, the Federal Government would establish minimal Federal requirements for a few critical components (e.g., group size) that appear to be important to the well-being of children in day care.
- A third model would involve the most extensive Federal role. The Federal Government would draft comprehensive and specific day care requirements, applicable to both the State and to the day care provider.

FINDINGS AND CONCLUSIONS

Purpose

The purpose of the FIDCR is to define a set of day care characteristics that protect and enhance the well-being of children enrolled in federally funded day care programs. For most children in federally funded day care—children without special physical, cognitive, or social problems—insuring well-being means providing the elements of care that are needed to nurture the growth of any healthy child. Children with special problems need individual assessment and provision of care over and above those required by all children.

Scope of Application

By law, the FIDCR apply to some but not all federally funded programs. In practice, they apply to some but not all types of day care. For example, the FIDCR apply to Title XX-funded care and, in some situations, to the Department of Agriculture's Child Care Food Program. They do not apply to the Head Start program (which has its own standards that individually equal or exceed the FIDCR), to AFDC-funded care, or to CETA-funded programs.

If the FIDCR represent the basic elements that the Federal Government believes are necessary for the well-being of children in some forms of federally funded day care, and if one of the basic purposes of the FIDCR was to bring uniformity to Federal childcare requirements, logic would indicate that the FIDCR should apply whenever the Federal Government subsidizes day care. This belief was expressed repeatedly during the public meetings to review the draft of this report.

It appears, however, that some situations may call for additional requirements to meet the needs of a special category of children. Head Start, for example, may require additional standards to fulfill its objectives of compensatory education. Furthermore, new legislation would be required for the FIDCR to apply to all federally funded day care.

As amended by Title XX, the FIDCR relate to family and group home day care and center care. Title XX also requires that in-home care meet standards set by the States. In practice, however, these requirements have not been uniformly applied to in-home and family day care.

The FIDCR are not simply Federal regulations for providers of care; they also apply to administrative agencies. Unfortunately the FIDCR are often unclear as to the division of responsibilities. New regulations must distinguish among the administrative entities and affix clear responsibilities for specific administrative functions.

Content

In regard to the appropriateness of the FIDCR, this study recommends the refocusing of some of the requirements, the elimination of several elements within individual FIDCR, and the consideration of the new FIDCR promoting continuity of care.

Grouping of Children. Findings on the importance of group size suggest that this factor should receive more relative emphasis in the regulations. This shift does not necessarily mean that ratio should be omitted from future regulations but rather that group size should be regarded as the principal regulatory tool for assuring adequate interaction, and that ratio will be influenced or determined by the group size requirement.

Caregiver Qualifications. The current FIDCR do not include a separate component for caregiver qualifications although elements of this subject are addressed briefly in several of the other components.

It appears to be important to differentiate between supervisory personnel and caregiving staff because the skills needed by these two groups differ. Supervisors need budgetary and management skills, in addition to child development skills. The revision process should consider the advisability of separate requirements for center directors, lead teachers, or directors of family day care home networks.

Research data and expert opinion clearly show that specialization in child development areas improves the ability of caregivers to promote child growth and development. Although inservice training of caregivers could be broadly regulated, such regulation should not cover the extent and type of training.

The present FIDCR, as well as HEW policy, recommend that "... priority in employment be given to welfare recipients ... and other low-income people." To insure the well-being of children, the new FIDCR should require that welfare recipients hired to work in a day care program possess adequate skills, ability, and motivation to work with children, consistent with other entry-level caregiver qualifications.

Educational or Developmental Services. HEW believes that developmental activities constitute a core component in day care. All children need developmental experiences whether at home or in day care. Experts believe that there should be clearly defined developmental goals and program objectives for children in day care facilities. Sufficient age-appropriate learning and play materials are also important. The success of this component depends on qualified caregivers and program supervisors. Goals and objectives also serve to inform the parent about the program and to support caregiver behavior. Developmental activities should be an integral part of the day care experience.

Environmental Standards. This is a core element that assures the physical well-being of children while in care. The current FIDCR reference local codes in this area. However, local codes are often contradictory and sometimes inappropriate to day care. Local codes also often focus on building safety but not on the safety of toys, playground materials, etc. HEW should use technical assistance to help State and local governments to upgrade their codes to make them more appropriate for protection of children in day care.

Health Services. All children need health services whether they are in day care or at home. It is essential for the well-being of children that both center and family care homes serve a "quality control" function in maintaining the health of the children in their care.

Nutrition Services. The provision of nutritious meals is a core element necessary for the well-being of a child in care. The current FIDCR do not describe how many meals or snacks must be served nor what criteria should be used to determine nutritional quality. Many experts recommend that standards be developed.

Parent Involvement. The present FIDCR stress parent involvement in policymaking in group facilities. Although parent involvement in policymaking should be encouraged, the emphasis should be on open two-way communication between parents and providers.

Social Services. In general, the Social Services component should serve a "quality control" function. The day care agency or facility can be a link with social services agencies for severely disturbed or disadvantaged families. The agency and facility should also provide information and referral for parents requesting it.

Administration and Coordination, and Evaluation. These two components are combined in this discussion. For the most part they apply to the administering agency, not to the provider.

The new FIDCR should completely separate requirements for administering agencies from requirements for the various modes of care. Furthermore, the FIDCR administrative requirements should be combined with the other Title XX requirements that specifically relate to the administration of day care.

The Evaluation component also contains provisions for the provider to do periodic self-evaluations. Organizational self-assessment such as this should continue to be encouraged. The extent of the self-assessment will have to be tailored to the size and nature of the day care provider. The major emphasis on evaluation should be to provide assistance and technical support, and should be placed on the States rather than providers.

Continuity of Care: A Non-FIDCR Component. Continuity cannot be easily mandated. Qualified caregivers cannot be forced to remain in their jobs and parents cannot be required to keep their children in one care arrangement. However, agency placement practices could be reexamined, reimbursement rates improved, and sliding fee schedules promoted to reduce unnecessary shifts in arrangements. Enforcement of regulations should be sensitive to the impact of abrupt changes in group size or personnel on the continuity of care for the particular children involved.

Implementation and Administration

It is extremely important for HEW to work to create a supportive climate for the FIDCR. HEW must be sensitive to the different interest groups concerned with day care regulation and work to establish and maintain public—parent, taxpayer, provider, legislator, and administrator—support.

RECOMMENDATIONS

The FIDCR should be revised to improve their ability to protect the well-being of children in center care, family care, and in-home care and to assure consistent and equitable interpretation. The revision should:

- Reflect current research and expert judgment on elements critical to the well-being of children in care.
- Clarify roles and responsibilities of providers and State and local administrators.
- Educate as well as regulate. This can be done by writing the regulations in clear language, by clearly distinguishing between legal requirements and recommendations, by giving examples of satisfactory compliance, and by defining a common terminology.
- Provide separate and unique requirements for:
  - Different forms of care: in-home, family home, group home, and center care.
  - Children of different ages in care.
  - Children with special needs or handicaps.
  - Different administering agencies.
- Accommodate the rich diversity in childcare needs and arrangements which exist in our pluralistic society.
- Include participation of all interested individuals in the process of writing and implementing the new regulations.

To minimize disruption in the day care field, the Department also recommends that Congress extend the current moratorium on the FIDCR until the Department publishes final day care regulations.

In addition, the FIDCR revision process may lead HEW to propose legislation addressing:

- A clarification of the congressional intent about the goals of federally regulated day care.
- Desirability of one set of Federal regulations to apply to all federally funded day care.
- Repeal of statutory provisions that require that particular Federal day care programs conform to the 1968 FIDCR.
- Desirability of a wider range of sanctions than now exists for noncompliance with the FIDCR.
- Desirability of additional funds for training for caregivers.

NEXT STEPS FOR THE DEPARTMENT

In order to stimulate public participation in the development of the new FIDCR, the Department will undertake two major activities:

- Nationwide dissemination of this report for public review and comment.
- Discussions between HEW central and regional staff and State officials about administrative considerations.

By the end of the summer of 1978, the Department should have received congressional and public comment on the FIDCR appropriateness report as well as the results of major research now underway. HEW should then be in a position to make decisions on the division of responsibilities between the Federal and State governments. With those decisions made, the Department intends to draft the proposed revised FIDCR for public comment. This approach carries out the Secretary's plan to obtain as many public and professional opinions on the FIDCR as possible before publishing proposed as well as final revisions.

Later in the year, the sequence of events for publication is expected to be as follows:

- Briefings in Washington, D. C., and at regional meetings and workshops in all the States.

- Publication of a Notice of Proposed Rulemaking (NPRM) in the Federal Register.

- Nationwide dissemination of the NPRM through mailings and through placement in publications of organizations concerned with day care. HEW will seek to use innovative methods of dissemination of the NPRM.

- Formal hearings on the NPRM in Washington, D. C., and on a regional basis.

- Field briefings of representatives of the day care community about the proposed regulations.

When HEW has fully considered all public and professional views on the proposed new FIDCR, it will publish the final revised regulations in the Federal Register.

APPENDIX B

TEXT OF THE FIDCR

FEDERAL INTERAGENCY DAY CARE REQUIREMENTS

PURSUANT TO SEC. 522 (d)
OF THE ECONOMIC OPPORTUNITY ACT

* * *

as approved by

U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
U. S. OFFICE OF ECONOMIC OPPORTUNITY
U. S. DEPARTMENT OF LABOR
September 23, 1968

DHEW Publication No. (OHDS) 78-31081

NOTE:

The Federal Interagency Day Care Requirements, when applied in relation to use of Title XX, Social Security Act, funds, have been amended as follows:

(1) Page 6, Part I.B.3., Child/staff ratios for children under 3 years and for school age children receiving care in day care centers:

Age	Ratio
Under 6 weeks	1:1
6 weeks to 3 years	1:4
School age 6-10 years	1:15
School age 10-14 years	1:20

(2) Page 9, Part III, Educational Services are no longer requirements, but are recommended.

DISCRIMINATION PROHIBITED--Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color, or national origin, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Therefore, the programs covered in this publication must be operated in compliance with this law.

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PREFACE

Day care is a service for the child, the family, and the community and is based on the demonstrated needs of children and their families. It depends for its efficacy on the commitment, the skill, and the spirit with which it is provided.

Day care services supplement parental care by providing for the care and protection of children who must be outside of their own homes for a substantial portion of a 24-hour day. These services may be provided when parents are employed, are in training programs, or, for other reasons, need these services for their children.

Day care services should be developed and carried out as part of a comprehensive community plan designed to promote and maintain a stable family environment for children. Day care can serve most effectively and appropriately as a supplement to care in the child's own family when other services support family care, such as homemaker service. Only then can the plan of care for a child be based on what is best for him and his particular family. Communities planning coordinated child care programs need to develop a wide range of services, including, but not limited to, day care services.

DEFINITIONS

DAY CARE SERVICES -- comprehensive and coordinated sets of activities providing direct care and protection of infants, preschool and school-age children outside of their own homes during a portion of a 24-hour day.[1] Comprehensive services include, but are not limited to, educational, social, health, and nutritional services and parent participation. Such services require provision of supporting activities including administration, coordination, admissions, training, and evaluation.

ADMINISTERING AGENCY -- any agency which either directly or indirectly receives Federal funds for day care services subject to the Federal Interagency Day Care Standards and which has ultimate responsibility for the conduct of such a program. Administering agencies may receive Federal funds through a State agency or directly from the Federal Government. There may be more than one administering agency in a single community.

OPERATING AGENCY -- an agency directly providing day care services with funding from an administering agency. In some cases, the administering and operating agencies may be the same, e.g., public welfare departments or community action agencies which directly operate programs. Portions of the required services may be performed by the administering agency.

DAY CARE FACILITY -- the place where day care services are provided to children, e.g., family day care homes, group day care homes, and day care centers. Facilities do not necessarily provide the full range of day care services. Certain services may be provided by the administering or operating agency.

1/ The Office of Economic Opportunity uses 7 hours as the minimum time period for its preschool day care programs; however, most of the Standards in this document are also applicable to part-day Head Start programs.

STANDARDS -- Standards consist of both Interagency Requirements and Recommendations. The Requirements only are presented in this document; the Recommendations will be issued separately.

Interagency Requirements -- a mandatory policy which is applicable to all programs and facilities funded in whole or in part through Federal appropriations.

Interagency Recommendations -- an optional policy based on what is known or generally held to be valid for child growth and development which is recommended by the Federal agencies and which administering agencies should strive to achieve.

FEDERAL INTERAGENCY DAY CARE REQUIREMENTS

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INTRODUCTION

The legislative mandates of the Economic Opportunity Amendments of 1967 require that the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity coordinate programs under their jurisdictions which provide day care so as to obtain, if possible, a common set of program Standards and regulations and to establish mechanisms for coordination at State and local levels. The Secretary of Labor has joined with the Director of the Office of Economic Opportunity and the Secretary of Health, Education, and Welfare in approving these Standards. Accordingly, this document sets forth Federal Interagency Requirements which day care programs must meet if they are receiving funds under any of the following programs:

Title IV of the Social Security Act

Part A--Aid to Families With Dependent Children

Part B--Child Welfare Services

Title I of the Economic Opportunity Act--Youth Programs

Title II of the Economic Opportunity Act--Urban and Rural Community Action Programs

Title III of the Economic Opportunity Act

Part B--Assistance for Migrant, and other Seasonally Employed, Farmworkers and Their Families (These Federal Interagency Requirements will not apply in full to migrant programs until July 1, 1969.)

Title V of the Economic Opportunity Act

Part B--Day Care Projects

Manpower Development and Training Act

Title I of the Elementary and Secondary Education Act (Programs funded under this title may be subject to these Requirements at the discretion of the State and local education agencies administering these funds.)

These Requirements will be supplemented by a series of Federal Interagency Recommendations which are not mandatory but represent highly desirable objectives. The Requirements and Recommendations taken together constitute the Federal Interagency Day Care Standards.

As a condition for Federal funding, agencies administering day care programs must assure that the Requirements are met in all facilities which the agencies establish, operate, or utilize with Federal support. If a facility does not provide all of the required services, the administering agency must assure that those that are lacking are otherwise provided.

Administering agencies must develop specific requirements and procedures within the framework of the Federal Interagency Requirements and Recommendations to maintain, extend, and improve their day care services. Additional standards developed locally may be higher than the Federal Requirements and must be at least equal to those required for licensing or approval as meeting the standards established for such licensing. Under no circumstances, may they be lower. It is the intent of the Federal Government to raise and never to lower the level of day care services in any State.

The Interagency Requirements will be utilized by Federal agencies in the evaluation of operating programs.

Application of Requirements

These Requirements cover all day care programs and facilities utilized by the administering agencies which receive Federal funds, whether these facilities are operated directly by the administering agencies or whether contracted to other agencies. Such programs and facilities must also be licensed or meet the standards of licensing applicable in the State. Day care may be provided:

In a day care facility operated by the administering agency.

In a day care facility operated by a public, voluntary, or proprietary organization which enters into a contract to accept children from the administering agency and to provide care for them under the latter's policies. (The operating organization may also serve children who are not supported by the administering agency.)

Through some other contractual or other arrangement, including the use of an intermediary organization designed to provide coordinated day care services, or the use of facilities provided by employers, labor unions, or joint employer-union organizations.

Through the purchase of care by an individual receiving aid to families with dependent children or child welfare services funds for the service.

Waiver of Requirements

Requirements can be waived when the administering agency can show that the requested waiver may advance innovation and experimentation and extend services without loss of quality in the facility. Waivers must be consistent with the provisions of law. Requests for waivers should be addressed to the regional office of the Federal agency which is providing the funds. Requirements of the licensing authority in a State cannot be waived by the Federal regional office.

Effective Date of Requirements

The Requirements apply to all day care programs initially funded and to those refunded after July 1, 1968. Administering agencies are expected to immediately initiate planning and action to achieve full compliance within a reasonable time. Except where noted, up to 1 year may be allowed for compliance provided there is evidence of progress and good intent to comply.

Enforcement of Requirements

The basic responsibility for enforcement of the Requirements lies with the administering agency. Acceptance of Federal funds is an agreement to abide by the Requirements. State agencies are expected to review programs and facilities at the local level for which they have responsibility and make sure that the Requirements are met. Noncompliance may be grounds for suspension or termination of Federal funds.

The Federal agencies acting in concert will also plan to review the operation of selected facilities.

COMPREHENSIVE AND COORDINATED SERVICES

The material which follows is, for convenience, arranged according to certain categories of activities or service. Day care works well, however, only when there is a unity to the program. The educator must be concerned with health matters, the nurse with social service activities, and the parent coordinator with helping professionals. Program design must take into account these complex interrelationships.

I. DAY CARE FACILITIES

A. Types of Facilities

It is expected that a community program of day care services will require more than one type of day care facility if the particular needs of each child and his parents are to be taken into consideration. Listed below are the three major types of day care facilities to which the Federal Requirements apply. They are defined in terms of the nature of care offered. While it is preferable that the three types of facilities be available, this is not a Requirement.

1. The family day care home serves only as many children as it can integrate into its own physical setting and pattern of living. It is especially suitable for infants, toddlers, and sibling groups and for neighborhood-based day care programs, including those for children needing after-school care. A family day care home may serve no more than six children (3 through 14) in total (no more than five when the age range is infancy through 6), including the family day care mother's own children.

2. The group day care home offers family-like care, usually to school-age children, in an extended or modified family residence. It utilizes one or several employees and provides care for up to 12 children. It is suitable for children who need before- and after-school care, who do

not require a great deal of mothering or individual care, and who can profit from considerable association with their peers.

3. The day care center serves groups of 12 or more children. It utilizes subgroupings on the basis of age and special need but provides opportunity for the experience and learning that accompanies a mixing of ages. Day care centers should not accept children under 3 years of age unless the care available approximates the mothering in the family home. Centers do not usually attempt to simulate family living. Centers may be established in a variety of places: private dwellings, settlement houses, schools, churches, social centers, public housing units, specially constructed facilities, etc.

B. Grouping of Children

Interagency Requirements

The administering agency, after determining the kind of facility to be used, must ensure that the following limits on size of groups and child-to-adult ratios are observed. All new facilities must meet the requirements prior to Federal funding. Existing programs may be granted up to 3 years to meet this requirement, if evidence of progress and good intent is shown.

1. Family day care home 1/

   a. Infancy through 6 years. No more than two children under 2 and no more than

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1/ In the use of a family day care home, there must always be provision for another adult on whom the family day care mother can call in case of an emergency or illness.

There are circumstances where it would be necessary to have on a regular basis two adults in a family day care home; for example, if one or more of the children were retarded, emotionally disturbed, or handicapped and needed more than usual care.

The use of volunteers is very appropriate in family day care. Volunteers may include older children who are often very successful in working with younger children when under adequate supervision.

five in total, including the family day care mother's own children under 14 years old.

b. Three through 14 years. No more than six children, including the family day care mother's children under 14 years old.

2. Group day care home 2/

   a. Three through 14 years. Groups may range up to 12 children but the child-staff ratio never exceeds 6 to 1. No child under 3 should be in this type of care. When preschool children are cared for, the child-staff ratio should not exceed 5 to 1.

3. Day care center 3/

   a. Three to 4 years. No more than 15 in a group with an adult and sufficient assistants, supplemented by volunteers, so that the total ratio of children to adults is normally not greater than 5 to 1.

2/ Volunteers and aides may be used to assist the adult responsible for the group. Teenagers are often highly successful in working with younger children, but caution should be exercised in giving them supervisory responsibility over their peers.

As in family day care, provision must be made for other adults to be called in case of an emergency or illness.

3/ The adult is directly responsible for supervising the daily program for the children in her group and the work of the assistants and volunteers assigned to her. She also works directly with the children and their parents, giving as much individual attention as possible.

Volunteers may be used to supplement the paid staff responsible for the group. They may include older children who are often highly successful in working with younger children. Caution should be exercised in assigning teenagers supervisory responsibility over their peers.

b. Four to 6 years. No more than 20 in a group with an adult and sufficient assistants, supplemented by volunteers, so that the total ratio of children to adults is normally not greater than 7 to 1.

c. Six through 14 years. No more than 25 in a group with an adult and sufficient assistants, supplemented by volunteers, so that the total ratio of children to adults is normally not greater than 10 to 1.

Federal Interagency Requirements have not been set for center care of children under 3 years of age. If programs offer center care for children younger than 3, State licensing regulations and requirements must be met. Center care for children under 3 cannot be offered if the State authority has not established acceptable standards for such care.

C. Licensing or Approval of Facilities as Meeting the Standards for Such Licensing

Interagency Requirements

Day care facilities (i.e., family day care homes, group day care homes, and day care centers) must be licensed or approved as meeting the standards for such licensing. If the State licensing law does not fully cover the licensing of these facilities, acceptable standards must be developed by the licensing authority or the State welfare department and each facility must meet these standards if they are to receive Federal funds.

II. ENVIRONMENTAL STANDARDS

A. Location of Day Care Facilities

Interagency Requirements

1. Members of low-income or other groups in the population and geographic areas who (a) are eligible under the regulations of the funding agency and (b) have the greatest relative need must be given priority in the provision of day care services.

2. In establishing or utilizing a day care facility, all the following factors must be taken into consideration: 4/

   a. Travel time for both the children and their parents.

   b. Convenience to the home or work site of parents to enable them to participate in the program.

   c. Provision of equal opportunities for people of all racial, cultural, and economic groups to make use of the facility.

   d. Accessibility of other resources which enhance the day care program.

   e. Opportunities for involvement of the parents and the neighborhood.

3. Title VI of the Civil Rights Act of 1964 requires that services in programs receiving Federal funds are used and available without discrimination on the basis of race, color, or national origin.

B. Safety and Sanitation

Interagency Requirements

1. The facility and grounds used by the children must meet the requirements of the appropriate safety and sanitation authorities.

2. Where safety and sanitation codes applicable to family day care homes, group day care homes, or day care centers do not exist or are not being implemented, the operating agency or the administering agency must work with the appropriate safety and sanitation authorities to secure technical advice which will enable them to provide adequate safeguards.

4/ No universal requirements can be established to govern every local situation. There must, however, be consideration of each of these factors in light of the overall objectives of the day care program and the legal requirements which exist, such as title VI of the Civil Rights Act of 1964 and title IV, part B, of the Social Security Act.

C. Suitability of Facilities

Interagency Requirements

1. Each facility must provide space and equipment for free play, rest, privacy, and a range of indoor and outdoor program activities suited to the children's ages and the size of the group. There must be provisions for meeting the particular needs of those handicapped children enrolled in the program. Minimum requirements include:

   a. Adequate indoor and outdoor space for children, appropriate to their ages, with separate rooms or areas for cooking, toilets, and other purposes.

   b. Floors and walls which can be fully cleaned and maintained and which are nonhazardous to the children's clothes and health.

   c. Ventilation and temperature adequate for each child's safety and comfort.

   d. Safe and comfortable arrangements for naps for young children.

   e. Space for isolation of the child who becomes ill, to provide him with quiet and rest and reduce the risk of infection or contagion to others.

III. EDUCATIONAL SERVICES

Interagency Requirements

1. Educational opportunities must be provided every child. Such opportunities should be appropriate to the child's age regardless of the type of facility in which he is enrolled, i.e., family day care home, group day care home, or day care center.

2. Educational activities must be under the supervision and direction of a staff member trained or experienced in child growth and development. Such supervision may be provided from a central point for day care homes.

3. The persons providing direct care for children in the facility must have had training or demonstrated ability in working with children.

4. Each facility must have toys, games, equipment and material, books, etc., for educational development and creative expression appropriate to the particular type of facility and age level of the children.

5. The daily activities for each child in the facility must be designed to influence a positive concept of self and motivation and to enhance his social, cognitive, and communication skills. 5/

IV. SOCIAL SERVICES

Interagency Requirements

1. Provision must be made for social services which are under the supervision of a staff member trained or experienced in the field. Services may be provided in the facility or by the administering or operating agency.

2. Nonprofessionals must be used in productive roles to provide social services.

3. Counseling and guidance must be available to the family to help it determine the appropriateness of day care, the best facility for a particular child, and the possibility

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5/ For school-age children, it is desirable that the policies at the day care facility be flexible enough to allow the children to go and come from the day care facility in accordance with their ability to become independent and to accept appropriate responsibility. School-age children also must have opportunities to take part in activities away from the day care facility and to choose their own friends.

The day care staff must keep in mind that for school-age children the school is providing the formal educational component. The day care staff are more nearly "parent supplements." They have responsibility, however, to supervise homework and broaden the children's educational, cultural, and recreational horizons.

of alternative plans for care. The staff must also develop effective programs of referral to additional resources which meet family needs.

4. Continuing assessment must be made with the parents of the child's adjustment in the day care program and of the family situation.

5. There must be procedures for coordination and cooperation with other organizations offering those resources which may be required by the child and his family.

6. Where permitted by Federal agencies providing funds, provision should be made for an objective system to determine the ability of families to pay for part or all of the cost of day care and for payment.

V. HEALTH AND NUTRITION SERVICES

Interagency Requirements

1. The operating or administering agency must assure that the health of the children and the safety of the environment are supervised by a qualified physician. 6/

2. Each child must receive dental, medical, and other health evaluations appropriate to his age upon entering day care and subsequently at intervals appropriate to his age and state of health. 7/

3. Arrangements must be made for medical and dental care and other health related treatment for each child using existing

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6/ While nurses or others with appropriate training and experience may plan and supervise the health aspects of a day care program, the total plan should be reviewed by a pediatrician or a physician especially interested in child health. Ideally, such a physician should participate in planning the total day care program and should be continuously involved as the program is carried out. Consultation on technical safety and environmental matters may be provided by other specialists. Individual health evaluations and medical and dental care should be carried out only by highly qualified physicians and dentists.

7/ If the child entering day care has not recently had a comprehensive health evaluation by a physician, this should be provided promptly after he enters a day care program.

community resources. In the absence of other financial resources, the operating or administering agency must provide, whenever authorized by law, such treatment with its own funds. 8/

4. The facility must provide a daily evaluation of each child for indications of illness.

5. The administering or operating agency must ensure that each child has available to him all immunizations appropriate to his age.

6. Advance arrangements must be made for the care of a child who is injured or becomes ill, including isolation if necessary, notification of his parents, and provisions for emergency medical care or first aid.

7. The facility must provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner. Consulation should be available from a qualified nutritionist or food service specialist.

8. All staff members of the facility must be aware of the hazards of infection and accidents and how they can minimize such hazards.

8/ Because day care is designed to supplement parental care and strengthen families, the agency should help parents to plan and carry out a program for medical and dental care for the children. Agencies should not make the arrangements unless the parents are unable to do so. The agency should help to find funds and services and help parents to make use of these resources. Such help may include making appointments; obtaining transportation; giving reminders and checking to be sure appointments are kept, prescriptions filled, medication and treatments administered. Educational programs and social services should be available to help families carry out health plans.

The day care agency, however, in those instances where the Federal funds are legally available to be expended for health services, has the ultimate responsibility of ensuring that no child is denied health services because his parents are unable to carry out an adequate health plan. Aid to families with dependent children and child welfare services funds are not legally available for health care, but States are encouraged to use Medicaid funds whenever possible.

9. Staff of the facility and volunteers must have periodic assessments of their physical and mental competence to care for children. 9/

10. The operating or administering agency must ensure that adequate health records are maintained on every child and every staff member who has contact with children.

VI. TRAINING OF STAFF

Interagency Requirements

1. The operating or administering agency must provide or arrange for the provision of orientation, continuous inservice training, and supervision for all staff involved in a day care program -- professionals, nonprofessionals, and volunteers -- in general program goals as well as specific program areas; i.e., nutrition, health, child growth and development, including the meaning of supplementary care to the child, educational guidance and remedial techniques, and the relation of the community to the child. 10/

2. Staff must be assigned responsibility for organizing and coordinating the training program. 11/

9/ Tuberculin tests or chest X-rays should ensure that all persons having contact with the children are free of tuberculosis. Physical and mental competence are better assured by regular visiting and supervision by competent supervisors than by routine medical tests or examinations.

10/ Special techniques for training of day care mothers in family day care homes may need to be developed. One example of such technique is the use of a "roving trainer" who would have responsibility for working on a continuous basis with several day care mothers in their own homes. Volunteers could also be used as substitutes in family day care homes to allow day care mothers to participate in group training sessions at other locations.

11/ Persons from colleges and universities, public schools, voluntary organizations, professional groups, government agencies, and similar organizations can offer valuable contributions to the total training program.

3. Nonprofessional staff must be given career progression opportunities which include job upgrading and work related training and education.

VII. PARENT INVOLVEMENT

Interagency Requirements

1. Opportunities must be provided parents at times convenient to them to work with the program and, whenever possible, observe their children in the day care facility.

2. Parents must have the opportunity to become involved themselves in the making of decisions concerning the nature and operation of the day care facility.

3. Whenever an agency (i.e., an operating or an administering agency) provides day care for 40 or more children, there must be a policy advisory committee or its equivalent at that administrative level where most decisions are made. 12/ The committee membership should include not less than 50 percent parents or parent representatives, selected by the parents themselves in a democratic fashion. Other members should include representatives of professional organizations or individuals who have particular knowledge or skills in children's and family programs.

4. Policy advisory committees 13/ must perform productive functions, including, but not limited, to:

    a. Assisting in the development of the programs and approving applications for funding.

12/ That level where decisions are made on the kinds of programs to be operated, the hiring of staff, the budgeting of funds, and the submission of applications to funding agencies.

13/ Policy advisory committees, the structure providing a formal means for involving parents in decisions about the program, will vary depending upon the administering agencies and facilities involved.

b. Participating in the nomination and selection of the program director at the operating and/or administering level.

c. Advising on the recruitment and selection of staff and volunteers.

d. Initiating suggestions and ideas for program improvements.

e. Serving as a channel for hearing complaints on the program.

f. Assisting in organizing activities for parents.

g. Assuming a degree of responsibility for communicating with parents and encouraging their participation in the program.

VIII. ADMINISTRATION AND COORDINATION

A. Administration 14/

Interagency Requirements

1. The personnel policies of the operating agency must be governed by written policies which provide for job descriptions, qualification requirements, objective review of grievances and complaints, a sound compensation plan, and statements of employee benefits and responsibilities.

2. The methods of recruiting and selecting personnel must ensure equal opportunity for all interested persons to file an application and have it considered within reasonable criteria. By no later than July 1, 1969, the methods for recruitment and selection must provide for the effective use of nonprofessional positions and for priority in employment to welfare recipients and other low-income people filling those positions.

14/ Where the administering agency contracts for services with private individuals or proprietary organizations, it must include contractual requirements designed to achieve the objectives of this section.

3. The staffing pattern of the facility, reinforced by the staffing pattern of the operating and administering agency must be in reasonable accord with the staffing patterns outlined in the Head Start Manual of Policies and Instructions 15/ and/or recommended standards developed by national standard-setting organizations.

4. In providing day care through purchase of care arrangements or through use of intermediary organizations, the administering agency should allow waivers by the operating agency only with respect to such administrative matters and procedures as are related to their other functions as profit-making or private nonprofit organizations; provided, that in order for substantial Federal funds to be used, such organizations must include provisions for parent participation and opportunities for employment of low-income persons. Similarly, there must be arrangements to provide the total range of required services. All waivers must be consistent with law.

5. The operating or administering agency must provide for the development and publication of policies and procedures governing:

   a. Required program services (i.e., health, education, social services, nutrition, parent participation, etc.) and their integration within the total program.

   b. Intake, including eligibility for care and services, and assurance that the program reaches those who need it.

   c. Financing, including fees, expenditures, budgeting, and procedures needed to coordinate or combine funding within and/or between day care programs.

   d. Relations with the community, including a system of providing education about the program.

15/ HEAD START CHILD DEVELOPMENT PROGRAM: A Manual of Policies and Instructions. Office of Economic Opportunity, Community Action Program, Washington D.C. 20506. September 1967.

e. Continuous evaluation, improvement, and development of the program for quality of service and for the expansion of its usefulness.

f. Recording and reporting of information required by State and Federal agencies.

6. The administering and operating agencies and all facilities used by them must comply with title VI of the Civil Rights Act of 1964, which requires that services in programs receiving Federal funds are used and available without discrimination on the basis of race, color, or national origin.

B. COORDINATION

Interagency Requirements

1. Administering agencies must coordinate their program planning to avoid duplication in service and to promote continuity in the care and service for each child.

2. State administering agencies have a responsibility to develop procedures which will facilitate coordination with other State agencies and with local agencies using Federal funds.

3. Agencies which operate more than one type of program, e.g., a group day care home as well as day care center program, are encouraged to share appropriate personnel and resources to gain maximum productivity and efficiency of operation.

IX. EVALUATION

Interagency Requirements

1. Day care facilities must be periodically evaluated in terms of the Federal Interagency Day Care Standards.

2. Local operators must evaluate their own program activities according to outlines, forms, etc., provided by the operating and administering agencies. This self-evaluation must be periodically planned and scheduled so that results of evaluation can be incorporated into the preparation of the succeeding year's plan.

APPENDIX C

LEGISLATIVE HISTORY OF THE FIDCR

LEGISLATIVE HISTORY
FEDERAL INTERAGENCY DAY CARE REQUIREMENTS AND TITLE XX DAY CARE REQUIREMENTS

Legislative Authority in the
Economic Opportunity Act 1968 FIDCR

Economic Opportunity Amendments of 1967
Public Law 90-222, sec. 107(a) (Dec. 23, 1967) 42 USC 2932(d)

- Added sec. 522(d) to the Economic Opportunity Act of 1964, which directed the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity to establish a common set of day care program standards and regulations.

Economic Opportunity Amendments of 1972
Public Law 92-424, sec. 19 (Sept. 19, 1972)

- Added to the original FIDCR mandate the condition that "such standards [for day care programs] must be no less comprehensive than" the 1968 FIDCR.

Community Services Act of 1974
Public Law 93-644, sec. 8(b) (Jan. 4, 1975)

- Removed the word "Director" (of the Office of Economic Opportunity) from the FIDCR mandate, making the Secretary of Health, Education, and Welfare solely responsible for carrying it out.

Legislative Authority in
Title XX of the Social Security Act: Title XX FIDCR

Social Services Amendments of 1974
Public Law 93-647, sec. 2 (Jan. 4, 1975)

- Established Title XX of the Social Security Act.
- Incorporated a modified form of FIDCR as funding requirements for day care services, sec. 2002(a)(9)(A) of Title XX. 42 USC 1397a

- Sec. 2002(a)(9)(B) called for report of appropriateness of the requirements imposed by subparagraph (A) and gave Secretary of Health, Education, and Welfare authority to change the requirements.

- Sec. 2002(a)(9)(C) specifically superseded the requirements of sec. 522(d) of the Economic Opportunity Act, the original FIDCR mandate.

- Sec. 3(f) of Public Law 93-647 imposed the requirements of sec. 2002(a)(9)(A) on Title IV-A and IV-B (Social Security Act) day care services, superseding requirements of sec. 522(d) of the Economic Opportunity Act.

Public Law 94-120, sec. 3 (Oct. 21, 1975)

- Suspended FIDCR staffing standards for children aged 6 weeks to 6 years, under certain conditions, effective to February 1976.

Public Law 94-401, sec. 2 (Sept. 7, 1976)

- Sec. 2 extended suspension of staffing standards to Sept. 30, 1977.

- Sec. 3 provided an additional $40 million in Title XX funds at 100 percent match for day care services for the period July 1 to Sept. 30, 1976, and an additional $200 million, under the same provision, for the period Oct. 1, 1976, to Sept. 30, 1977.

- Sec. 5 permitted waiving of staffing standards when fewer than 20 percent Title XX children are in care.

- Sec. 5 determined that in calculating the child-staff ratio for family day care homes, the number of children in care shall include the children of the caregiver under 6 years of age.

Public Law 95-171 (Nov. 12, 1977)

- Sec. 1(a) made an additional $200 million in Title XX funds available at 100 percent match for day care services for the period Oct. 1, 1977, to Sept. 30, 1978.

- Sec. 1(b) extended provision for calculation of child-staff ratio in family day care homes to Sept. 30, 1978.

- Sec. 1(d) extended suspension of staffing standards to Sept. 30, 1978.